

## **ZONDO COMMISSION OF INQUIRY**

Version 7 – 11 February 2019

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### **STATEMENT TO ZONDO COMMISSION OF INQUIRY BY ROBERT JOHN McBRIDE**

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#### **Legislative mandate**

1. The Independent Police Investigative Directorate is an independent body established by the Independent Police Investigative Directorate Act No. 1 of 2011, whose objects are set out in Section 2 thereof which, *inter alia* provides that the Independent Police Investigative Directorate ("IPID") should give effect to the provisions of Section 206(6) of the Constitution of RSA i.e. to establish an independent police complaints body established by national legislation in order to investigate alleged misconduct of, or any offence committed by a member of the Police Services in any province as well as further to ensure independent oversight of the South African Police and Municipal Police Services. There are further objectives to the Act.
2. The independence and impartiality of the Directorate is entrenched in terms of Section 4 of the IPID Act, which specifically states that the Directorate i.e. IPID functions independently from the South African Police Service.
3. Section 7(4) of the IPID Act provides that:

*“The Executive Director must refer criminal offences revealed as a result of an investigation to the National Prosecuting Authority for criminal prosecution and notify the Minister of such referral.” See Annexure A1*

4. The regulations for the operation of IPID provide, *inter alia*, that an investigator of IPID, as part of his functions, after collecting all evidence, statements and technical expert reports, if applicable, must submit a report on the investigation of the offence to the Executive Director or the relevant Provincial Head, as the case may be, containing recommendations regarding further action, which may include disciplinary measures to be taken against a member of the South African Police Service or the Municipal Police Service or criminal prosecution of such member. **See Annexure A2.**
5. The Standard Operating Procedures of IPID effective as from the 1<sup>st</sup> April 2013 and in particular in Section 7.10 thereof provide a procedure for the completion and closing of files and dockets. **See Annexure A3.**

## **Appointment**

6. I was appointed the Executive Director of IPID on the 3<sup>rd</sup> March 2014, in terms of section 6 of the IPID Act. Upon my appointment, I asked to be briefed on all high profile cases. One of the cases I was briefed on was the so called “Rendition Case”. After the briefing it became clear to me that the investigation was not conducted independently and impartially in line with IPID Act. What followed is fully traversed in my founding affidavits and replying affidavits with annexures filed in the high court, labour court and the Constitutional court to challenge my unlawful suspension. See

attached affidavits marked **Annexures A4 to A6**. The Constitutional Court found the actions of the minister to be unlawful and unconstitutional and set them aside. **See Annexure A7.**

7. Before I was suspended, I had written to the Chairperson of the Portfolio Committee on Police, Mr Francois Beukman ("**Beukman**"), asking that I be allowed to clarify and account to the Portfolio Committee on media reports about "two contradicting reports". Mr Beukman rejected this offer, citing the sub-judice rule. This was a concern to me given the fact that the doctrine of separation of powers compels him to hold the Executive and IPID to account. It is noteworthy that some members of the Portfolio Committee on Police held a meeting with the then Minister of Police, Nkosinathi Nhleko ("**Nhleko**") where my removal from office and that of then DPCI Head, Anwa Dramat ("**Dramat**") were discussed. The next day, Nhleko, made a presentation to the same portfolio committee to start a process to remove Dramat. **See Annexure A8.**
8. I pause to reflect on the events that preceded the Werksmans report which was used by Nhleko to legitimise his unlawful actions and the complicity of Sandile July ("**July**"), who compiled the said report. After Nhleko appointed Werksmans to investigate the "two reports" which he falsely alleged he had been given by the IPID, several attempts were made by July to interview IPID National Head of Investigations, Matthews Sesoko ("**Sesoko**") and IPID Lead Investigator, Innocent Khuba ("**Khuba**"). Sesoko was contacted by July and Sesoko indicated his willingness to cooperate but asked that the request be sent via email and be directed to me – he also provided the

relevant email addresses. Interestingly, when the email was sent, Khuba's and Sesoko's email addresses were typed correctly but mine was not. The email meant for me was sent to [rmcbride@ipid.co.za](mailto:rmcbride@ipid.co.za) instead of [rmcbride@ipid.gov.za](mailto:rmcbride@ipid.gov.za). Sesoko picked up on what he thought had been an error and alerted Werksmans. The next time they sent the email to [rmcbrde@ipid.gov.za](mailto:rmcbrde@ipid.gov.za) (leaving out the "i" in mcbride). One is left with no other conclusion than that Werksmans was in cahoots with Nhleko to conduct a sham investigation that would enable Nhleko to get rid of myself and Dramat by hook or crook.

9. Furthermore, Khuba reported having received multiple calls from Nhleko's Personal Assistant, Amelia Monaheng asking him to meet with Nhleko, who was so desperate to get Khuba to falsely implicate me in wrongdoing that Nhleko himself called Khuba promising him that the Ministry would cover his travelling costs to Cape Town on a weekend so that I would not find out about it. These were the actions of a government minister who was willing to use any means, including lies and deceit to capture the criminal justice system. Nhleko would later go to Parliament to perpetuate the same lies with the collusion of some members of Parliament.

### **Werksmans report**

10. Mr Israel Kgamanyane ("Kgamanyane"), who was the IPID's Free State Provincial Head at the time, was appointed to act as Executive Director.
11. After his appointment, Kgamanyane instructed Sesoko and Khuba to attend

interviews at Werksmans. Thereafter the discredited Werksmans report was leaked to the Sunday Times (Stephan Hofstatter and Mzilikazi wa Afrika) and the Sunday Independent (Solly Maphumulo). The Sunday Times and Sunday Independent ran a series of false stories to prop up Nhleko's false narrative.

12. The Werksmans report was the sole evidence against me, Khuba and Sesoko. A critique of the dodgy Werksmans report was filed with my papers when I challenged my unlawful suspension in the High Court. **See Annexure A4 to A6.** It should be noted that the author of this dodgy report, Advocate Sandile July, was later quoted by Maema in court as having as threatened to challenge his subpoena in the High Court on the basis that his report was hearsay and he could not stand by it in a court of law. So this report, which cost the taxpayers over R1,3 million was used to get rid of me, Khuba and Sesoko, was not worth the paper it was written on. **See Annexure A9.**
13. Bizarrely, Nhleko later tried to get the IPID to pay R9 million in legal costs incurred by him in his unlawful and unconstitutional attempt to remove me as IPID Executive Director.
14. On 21 May 2015, Khuba and Sesoko were suspended by Kgamanyane on the instructions of the Minister for allegedly altering the IPID's Progress Report into the Rendition Investigation, dated 22 January 2015 ("**the first report**") with myself. However, it should be noted that I did not even know about the existence of the report

that was supposedly altered as it predated my appointment as IPID Executive Director.

15. During the eighteen (18) months of my suspension, I heard about Kgamanyane wreaking havoc in the IPID by initially suspending and transferring at least eight (8) senior managers for no other reason than that they worked with me or that they deposed affidavits about information which was within their knowledge as IPID employees.
16. At the time of my return to the IPID, on 19 October 2016, the Constitutional Court had confirmed the High Court decision to declare my suspension unlawful and set it aside, I became aware that more people had been displaced at IPID under the so-called “restructuring”.

### **Suspensions, transfers and dismissals**

17. I now deal with the suspensions and transfers that occurred immediately following my suspension.
18. Matthews Sesoko (“Sesoko”) was the Chief Director: Investigations and Information Management. He is the National Head of Investigations. He made an affidavit in my application to challenge the constitutionality of section 6(3) and 6(6). He was suspended on 21 May 2015. He was charged with altering the report into Zimbabwe renditions investigation. As soon as Kgamanyane was appointed as Acting Executive

Director, he asked for the Panday case which was under investigation by the IPID. To date, this case is not on the court roll. Kgamanyane also went to Limpopo and the North West and collected dockets in which former DPCI Head, Mthandazo Berning Ntlemeza and Major-General Jan Mabula were suspects.

19. Sesoko was subsequently unlawfully dismissed by Advocate Mxolisi Zondo (“**Zondo**”), who presided over General Sibiya’s disciplinary hearing, without having presented his case. He had requested a postponement owing to illness but Zondo rejected his medical certificate and dismissed him in absentia. In his written ruling, Zondo concedes that it would have been fair to hear Sesoko’s version of events but bizarrely dismisses him with immediate effect, without allowing him to state his defence, because the medical certificate submitted by Sesoko’s counsel was from a general practitioner and not from a specialist. Furthermore, Sesoko’s dismissal was on the basis of hearsay evidence of a single witness. **See Annexure A10.**
20. Sesoko was also criminally charged with Khuba and me for fraud and defeating the ends of justice. The criminal charges were withdrawn on 01 November 2016. Upon my return to office in 2016, a settlement was reached with Sesoko’s attorneys to reinstate him to his former position.
21. Upon my return to office, I discovered that there were allegations that of the manipulation of cases to artificially inflate the performance of the IPID in my absence. Kgamanyane even went to Parliament and reported that performance was much better in the absence of the suspended and transferred, however, this was a blatant lie which was told to make himself look good. Nhleko awarded him a bonus for good

performance.

22. Innocent Khuba (“Khuba”) is the Provincial Head: Limpopo. Khuba was the lead investigator into allegations that some Zimbabweans were unlawfully handed over to Zimbabwean police, resulting in them being killed. He was suspended on 21 May 2015 on allegations of altering the investigation report into Zimbabwe ‘renditions’ with myself and Sesoko. During his suspension, he was told that he was suspended on the Minister's instructions. Khuba made an affidavit for my Constitutional Court case.
23. Prior to his dismissal, Khuba was approached by Werksmans, the Minister's PA and the Minister himself wanting to interview him and get him to implicate me. When he failed to implicate myself and Sesoko, disciplinary charges were brought against him. After six months of suspension, Khuba reached a plea bargain deal and was given a final written warning. Within a week, Khuba was summarily dismissed after he refused to falsely implicate me and Sesoko. Upon his refusal, he was dismissed with immediate effect.
24. Well before my appointment as IPID Executive Director, Ntlemeza himself had told Khuba while he was doing the rendition investigation that it was the only thing holding up his move to the DPCI after a ‘hit on Dramat’. **See Annexure A11.**



25. After Khuba was dismissed, he was approached by officers from the Hawks and promised his job back if only he made a false statement saying I had forced him to change the rendition report. Khuba recorded this approach by a Colonel Mahlangu, who is heard imploring Khuba to make a false statement to empower Ntlemeza. In the recording, Colonel Mahlangu further says Khuba would be restored to his position if he made such a statement. **See Recording 1.**
26. Khuba has since been restored to his position through an order of the Labour Court. Furthermore, the criminal charges against Khuba, Sesoko and myself were withdrawn on 01 November 2016.
27. Felicia Ntshangase (“**Ntshangase**”) is the Gauteng Provincial Head who was suspended on 8 July 2015 by Kgamanyane. Five days after my suspension, Nhleko addressed IPID management and made disparaging remarks about the judiciary. Ntshangase made an affidavit regarding this. She was suspended on allegations of nepotism for recommending the appointments of 3 officials in her office. However, the decision to appoint said officials was made by Mr Kgamanyane. The Public Service Commission later cleared Ntshangase of wrongdoing and recommended action against Kgamanyane instead.
28. Nomkhosi Netsianda (“**Netsianda**”) is the head of corporate services. She was suspended on 19 August 2015 on allegations of leaking information to the media. The

leaked information concerned the appointment of the Deputy Minister's daughter to a Deputy Director: Investigation post in the Free State, where Kgamanyane was the Provincial Head. Ms Netsianda advised against the appointment of the Deputy Minister's daughter. The documentation and her written notes ended up in a City Press report. The Public Service Commission ("**PSC**") later found that the Deputy Minister's daughter did not have the experience required for the post. Netsianda was also charged for conducting herself in a disgraceful manner by raising her voice during the Audit Committee meeting, where the funding of the IPID's case challenging Nhleko's interference with the IPID's independence was discussed. The disciplinary case against Netsianda was driven by the chairperson of the Audit Committee. **See Annexure A12.**

29. Netsianda's position was advertised in May 2016 and Molefe Matsomela ("**Matsomela**") was subsequently appointed on a six-month contract. Matsomela's security screening was done before the post was advertised, clearly indicating that advertisement and interviews were just a formality – the post was earmarked for Matsomela. During his tenure, the so-called restructuring proceeded at full speed and some people were transferred to more than one position. Matsomela never came back to work upon my return to office and he resigned thereafter. Since Matsomela's appointment was irregular, the IPID has instituted a process to recover the fruitless expenditure relating thereto in the amount of R450 456.44.

30. The reputations of the affected officials were ruined. Kgamanayane even issued a directive for IPID staff not to talk to the suspended and transferred officials. Due to the fact that there were no grounds for the transfers, three officials, Antonett Mphago (“Mphago”), Viceroy Maoka (“Maoka”) and Moses Dlamini (“Dlamini”), lodged a dispute at the General Public Service Sectoral Bargaining Council (“GPSSBC”) for their unfair transfers and a case of unlawful transfer in the Labour Court. The three were transferred for 8 months at great cost to the IPID just to punish them for having worked with me. The total cost of the transfers is in excess of R1 million, including the arbitration award which they won at the GPSSBC.
31. Pule Hillary Viceroy Maoka (“Maoka”) is the Director: Litigation Services. He made an affidavit for my Constitutional Court case. Maoka lodged a complaint regarding the conduct of Adv. Baloyi of NPA in the rendition prosecution. Mr Maoka was precautionary transferred to Limpopo on 1 September 2015 on allegations of leaking information to the media. Maoka was transferred at the same time as Antonett Mphago (to Gauteng) and Moses Dlamini (to KwaZulu-Natal). He was never charged with leaking information but was charged with the cancellation of bookings and failure to inform his supervisor and failure to report sick leave to the supervisor. Maoka was re-instated by the Labour Court on 29 April 2016, returning to his office on 06 May 2016. He was suspended on 12 May 2016 for 'providing legal assistance to his colleagues and for failure to make financial disclosure'. **See Annexure A13.**

32. Moses Dlamini (“**Dlamini**”) is the National Spokesman who was suspended on 20 June 2016. He made an affidavit in my Constitutional Court case. Dlamini was precautionary transferred to KwaZulu-Natal on 1 September 2015 on allegations of leaking information to the media. Dlamini was transferred at the same time as Antonette Mphago (to Gauteng) and Viceroy Maoka (to Limpopo). He was never charged with leaking information but was charged with the cancellation of bookings and failure to report sick leave to the supervisor timeously. Dlamini was re-instated by the Labour Court on 29 April 2016, returning to his office on 06 May 2016. He was suspended on 20 June 2016 for speaking to suspended officials (Maoka and McBride) against the directive of Kgamanyane, as well as allegations of sending disparaging emails about officials to IPID staff. Kgamanyane had issued a directive that IPID staff should not communicate with transferred and suspended officials. Dlamini was served with a letter of intent to permanently transfer him to Eastern Cape within 3 days of returning to the office. After objecting, he was transferred to the post of Director: Investigations at National Office effective 1 July 2016 as part of the “restructuring” After he objected to the transfer, he was suspended. **See Annexure A13.**
33. Dlamini's disciplinary hearing was presided over by the Limpopo Director of Public Prosecutions, Advocate Ivy Thenga (“**Thenga**”) to whom IPID makes referrals of cases investigated by it – a clear conflict of interest. Thenga said that she had been instructed to finalise the hearing over the weekend. Dlamini was reinstated upon my return to office.

34. Antonett Mphago (“Mphago”) is the Director: Executive Support in the office of the Executive Director. She was precautionary transferred to Gauteng on allegations of leaking information to the media. The said information related to the appointment of the daughter of the Deputy Minister of Police's daughter to a post of Deputy Director: Investigations in the Free State. She was transferred to Gauteng provincial office to the position of Deputy Director: Corporate Services position pending finalisation of investigations. She was never charged with leaking of information nor notified of the outcome of the investigation. On 1 December 2015, Mphago's transfer was uplifted after she had written to Kgamanyane informing him that 60 days had elapsed since her transfer and that no charges had been brought against her. She was denied access to her office and had to squat in the passage. On 30 June 2016 she was transferred to a position of Director: Compliance Monitoring, as a result of 'restructuring'. Mphago was under investigation on allegations of meeting/talking to with me on my visit to the national office on 9 June 2016. **See Annexure A13.**

### **Restructuring**

35. It is clear that Kgamanyane subscribed to the view that “If it works – break it!”, as there is no other way to comprehend the rationale behind the restructuring that went on during his tenure. He was like a mad scientist, transferring people to positions for which that had no competencies or experience. Some people even had to seek medical attention as a result of the senseless restructuring.
36. Vinesh Boodhoo (**“Boodhoo”**) was the Director: Investigation in Gauteng. He was

appointed by Ntshangase with two other people, who were forced out of IPID due to their association with Ms Ntshangase. Dan Morema (“Morema”) was appointed to act in Ntshangase's position, while she was on suspension. Morema victimised Boodhoo, as a result, he lodged a complaint against Morema. Boodhoo received correspondence informing him that the outcome of the investigation of his complaint was that he should be transferred out of Gauteng. Boodhoo was permanently transferred to the post of Director: Investigations in the Eastern Cape effective 1 July 2016 as a result of “restructuring”.

37. Marianne Moroasui (“**Moroasui**”) is the Chief Director: Legal Services. In March 2016 Kgamanyane had the Provincial Head of Kimberly and the then Deputy Provincial Head of the Western Cape take over the running of Legal Services whilst she was in the office. During the purported restructuring of the IPID, she was informed that she would be transferred to a position of Provincial Head in either Mpumalanga or Kimberley. She resisted the move and referred the matter to the PSA. Whilst still in consultation with the Kgamanyane, he made the decision to finally transfer her to Kimberley as Provincial Head. She was instructed to commence in Kimberley on 1 July 2016. She did not comply with the instruction and continued reporting to the National Office and one day she went out to lunch and upon her return her “biometric access” was deactivated and she could not access the National Office. Moroasui was informed by Matsomela, who was at the time acting as the head of Corporate Services that she had to report to Kimberly. Her Colleagues had to bring her handbag,

work bag and other personal belongings to her on the street as she was refused access, even to the National Office parking.

38. Zuziwe Cele (**“Cele”**) is the Deputy Director: Supply Chain Management. She was permanently transferred to Deputy Director: Corporate Services in Gauteng Province effective 1 August 2016 as a result of restructuring. She was seen to be a stumbling block to procurement.
39. Lindokuhle Ngcongco (**“Ngcongco”**) was the Chief Financial Officer (“CFO”) was transferred to Gauteng as the Provincial Head to head investigations. She was perceived to be a stumbling block to Kgamanyane’s plans for procurement. She was also opposed to the IPID paying for legal costs incurred by the Minister of Police (Nhleko). She has since left the IPID.
40. Mamodishe Molope (**“Molope”**) is the Chief Director: Compliance Monitoring and Compliance Management. She was transferred to Mpumalanga as Provincial Head to lead investigations, as part of restructuring.
41. Quite a number of other junior people were also transferred from their positions as a result of “restructuring” initiated by Kgamanyane with the approval of former Minister of Police, Nkosinathi Nhleko.

## **Return to office**

42. I returned to office on 19 October 2016 and requested Kgamanyane for a handover report. He was quite petulant and refused to give me such a report. He never returned to work and was irregularly transferred by Nhleko to the DPCI. He was accepted by former Hawks Head, Mthandazo Ntlemeza and appointed to the DPCI structure in the Free State. I had no say in Kgamanyane's transfer, which was done by Nhleko and Ntlemeza without any consultation. There is no greater example of interference in the operations of the IPID by a minister who had been found to have acted unlawfully and unconstitutionally by the Constitutional Court. To make matters worse, Kgamanyane was facing disciplinary action for the havoc he had caused at IPID. I wrote to Ntlemeza about my concerns. See **Annexure A14**.

43. Nhleko had awarded Kgamanyane a performance bonus which was clearly a gratification. He was the only one in IPID to be awarded a performance bonus.

## **Infiltration of IPID by Crime Intelligence**

44. I also found that IPID had been infiltrated by Crime Intelligence in the form of Tlou Kgomo ("Kgomo") and Emily Motsugi ("**Motsugi**"). Kgomo had been appointed as Director: Investigations. He was appointed to act as head of investigations in Sesoko's position. The two beat a hasty retreat back to Crime Intelligence soon after my return to office. My



next encounter with Kgomo was in Parliament where he was part of Phahlane's team to counter IPID's investigations. Kgomo would later approach IPID investigators, Mandla Mahlangu (**"Mahlangu"**) and Cedrick Nkabinde (**"Nkabinde"**), to offer them Brigadier positions to induce them to make false statements to implicate IPID managers in wrongdoing. In a recording made by one of the investigators, Kgomo can be heard making such an offer to Mahlangu. He confirms to Mahlangu that he is working with the North West team led by Major General Jan Mabula (**"Mabula"**) investigating a concocted case that would bring me "down", along with other IPID investigators and torpedo the investigation against Phahlane. Kgomo also took Mahlangu to Potchefstroom to meet Mabula. **See Annexure A15 (there's also a recording).**

45. Upon my return from my suspension on 19 October 2016 I was alerted of irregularities on how investigations had been conducted during the time when I was on suspension. There were allegations that certain cases that were being investigated by the IPID had been pre-maturely closed without carrying out proper investigation processes as contained in the Standard Operating Procedures. This was done in certain instances to push the statistics and other acts that amounted to defeating the ends of justice. These cases were termed "special closures". This was intended to manipulate statistics to give an impression that performance had been better under Kgamanyane. I instructed our Integrity Strengthening Unit to investigate these allegations. The Auditor-General also flagged some of these cases. One employee has already been dismissed as a result of this investigation. Another senior employee, Dan Morema, resigned when he was approached to make a statement. **See Annexure A16.**

## **Investigation into Phahlane**

46. Soon after my arrival I received a complaint from Paul O'Sullivan ("**O'Sullivan**"). The complaint was about a case of corruption and money laundering that had been opened against the then Acting National Commissioner of Police, General Phahlane. This case was first reported to the IPID before my arrival.
47. O'Sullivan had brought the case to the attention of Mr Kgamanyane, the Acting Executive Director, in March 2016 while I was on suspension. The complaint brought by O'Sullivan was that the case had not been investigated and he requested me to intervene and ensure that matter was investigated. One of the strange things that I found upon my return was that two cases had been opened, one as a duplicate of the other and vice versa – and both were then closed as duplicates of each other.
48. At the end of November 2016, a Task Team was formed that was to investigate the cases of corruption and money laundering that were levelled against General Phahlane. The Task Team comprised of Mandla Mahlangu, Temane Binang, Mantsha Raphesu and Cedrick Nkabinde.
49. The case to be investigated had to do with the construction of Phahlane's house at Sable Hills Estate allegedly with funds that were provided by a service provider to the SAPS. There was also the case of a music system worth R80 000 that was alleged to have been paid from the account of a service provider to the SAPS. Further there was a case of

vehicles in Phahlane's possession that, according to him, were either purchased and owned by him or sponsored for his use. The IPID investigated all cases and there was clear evidence of a corrupt relationship between Phahlane and service providers to the SAPS.

50. During January 2017 a search warrant was executed at the Sable Hills home of Phahlane. The purpose of the search was to identify the music system that was bought and paid for by a SAPS service provider. Present at the search was the person who had installed the music system, this was for purposes of identifying that the music system in Phahlane's house was the same music system that had been purchased by funds from a SAPS service provider and that he had installed in Phahlane's house.

51. After the search warrant was executed at Phahlane's house, he initiated a civil suit challenging the lawfulness of the search warrant.

52. The parties have exchanged papers in this matter and it was dormant since the latter part of 2017. Recently one of the original Task Team members, Cedrick Nkabinde, who was approached by Kgomo as mentioned in preceding paragraphs, deposed a supporting affidavit for Phahlane whilst he was undergoing a disciplinary process for several acts of misconduct. Nkabinde resigned with immediate effect on 19 October 2018, and his disciplinary hearing did not proceed.

### 53. Counter-investigation

54. I want to pause here and go back to when the initial investigation into the case of corruption and money laundering were initiated against Phahlane. O'Sullivan was the complainant and also because of his background in the matter he accompanied IPID investigators to the Sable Hills Estate to point out several witnesses to the case that the IPID was investigating. On some of the occasions he accompanied the IPID investigators together with his associate and attorney Sarah-Jane Trent.

55. As a result of the on-going investigations by the IPID with the assistance of O'Sullivan and Trent, Phahlane used his powers as the Acting National Commissioner to set up a team from the North West (Mabula Team) to start a counter-investigation on the IPID investigation against himself.

56. This SAPS counter-investigation was authorised under the guise of a security breach against the Acting National Commissioner. The North West Provincial Commissioner together with the Mabula Team concocted a report that was utilised to authorise their travel to Gauteng to investigate the purported security breach. Crime Intelligence ("CI") had earlier done an investigation of the alleged security breach and it found that there was in fact no security breach. The officers who did the investigation made statements to this effect. As a result of the concocted report, General Makhele was charged with defeating the ends of justice. This case is still with the NPA.

57. The Mabula Team then proceeded to counter the investigation of the IPID by approaching all the witnesses in the IPID investigation to get them to change their initial version against Phahlane and the SAPS service providers and their involvement in the construction of Phahlane's house and the cars.
58. Their counter-investigation resulted in a case being opened, Kameelfdrift 12/01/2017, against O'Sullivan and his associate Trent. The charges against them were, amongst others of impersonating IPID officials in terms of section 33(5) of the IPID Act, these were clearly trumped up charges. The charges were that they had visited Phahlane's Sable Hills home together with IPID investigators and that during the said visit they had impersonated IPID investigators.
59. During Trent's arrest her mobile phone was unlawfully confiscated and booked in for investigation in order to try and support the charges that were being fabricated against the pair and later on the IPID investigators that were added.
60. O'Sullivan and Trent made a number of appearances in the Pretoria Magistrate Court, in the case emanating from the Kameelfdrift case and around May 2017. Brigadier Ncube, one of the members of the Mabula Team made contact with two of the IPID investigators. He informed them that he was the investigator in the Kameelfdrift 12/01/2017 case and that he intended on adding them as co-accused in the case already before the Pretoria Magistrate Court.

61. Trent's phone was stolen by the Mabula Team and taken to Israel to be downloaded. The contents were leaked to the Sunday Times in a bid to falsely implicate myself and my investigators in wrongdoing to protect Phahlane.

62. There was a litany of charges that were brought against Mahlangu and Binang who were members of the IPID Task Team, at the top of the list were charges of contravening section 33(5) and section 33(2) of the IPID Act. The two investigators were added in State versus Sarah-Jane Trent and three others, which was held the Pretoria Magistrate Court. When Ncube had earlier come to IPID to obtain the statements of Mahlangu and Binang, I asked him why he was in Gauteng as he was based in the North West, he opened a case of intimidation against me.

63. The State Advocate in the matter was a Molatlhwa Mashuga ("**Mashuga**"), who also has some links to the NW SAPS team. The case was remanded on numerous times at the behest of the State, apparently for further investigations. After the numerous postponements for further investigations by Mashuga, the defence in October 2017, i.e IPID made an application that the matter be struck off the roll in terms of section 342A(3)(c) of the Criminal Procedure Act, No 51 of 1977, which deals with unreasonable delays in a matter before a court "

*"(3) If the court finds that the completion of the proceedings is being delayed unreasonably, the court may issue any such order as it deems fit in order to*

*eliminate the delay and any prejudice arising from it or to prevent further delay or prejudice, including an order-*

(a) ...;

(b) ...;

(c) *where the accused has not yet pleaded to the charge, that the case be struck off the roll and the prosecution not be resumed or instituted de novo without the written instruction of the attorney-general;”*

64. The Magistrate made an order that the matter be struck off the roll in terms of the above-mentioned section. The matter could only be re-enrolled with the written instruction of the NDPP, Shaun Abrahams at the time. This order by the Magistrate was made In October 2017.

65. It's important to indicate that neither the order by the Magistrate made in terms of section 342A(3)(c) of the Criminal Procedure Act nor the Prinsloo J Order, made in November 2017, stopped the Mabula Team from continuing with their counter investigation. This was clear when immediately after both orders Ncube took another warning statement, this time against Mantsha Raphesu and threatened to arrest the other members of the Task Team including myself, but despite all the threats the fabricated case is yet to be re-enrolled, further proving that the charges are baseless and are trumped up.

## **Interdict and main application wrt the counter-investigation (Court order in favour of the IPID)**

66. With the on-going counter-investigation by the Mabula Team, it was clear that the intention was to scupper the IPID investigation and the IPID brought an urgent application before the North Gauteng High Court in order to stop the counter-investigation and also to seek a declaratory that members of the SAPS that were themselves subjects of an investigation by the IPID should not investigate or oversee an investigation against members of the IPID.

67. An urgent interdict was sought against the Phahlane, at the time, the North West Provincial Commissioner, Mabula and Ncube. Later, in the main application, the other members of the Mabula Team were added as respondents as they were conducting this counter-investigation against members of the IPID.

68. Throughout the exchange of papers in this matter, the Mabula Team insisted that the cases that the IPID stated they were investigating against them were “cold cases”. This was proven to be false as a list was annexed in the papers to show the status of the cases against the members of the Mabula Team. It is, in any event, disingenuous for Mabula to say as the evidence shows that the only reason the cases had not progressed was due to them being suppressed. There is a **recording** in which one of the suspects admits to torturing the deceased in the Makau case and he implicates Mabula. See **Recording 3**



69. An agreement was reached by the parties and it was made the order of the court by Prinsloo J. At the time the order was made, Phahlane had been suspended as the Acting National Commissioner and General Mothiba had been appointed to act. Prior to the Prinsloo J order that was made on 28 November 2017, Mothiba had also been engaged on countless occasions to try and resolve the matter outside of the courts.

70. Prior the making of the Prinsloo J order, there had been countless engagements with the different senior management within SAPS in a bid to avoid litigation and come to an amicable solution to the number of civil suits that were in the courts. The Portfolio Committee on Police also tried to intervene by requesting an appearance and briefing by Phahlane, whilst he was still acting National Commissioner, and his team and the Executive Director and his team in order to try and resolve the battle that was playing out between the two departments.

71. All of the engagements and attempts to amicably resolve the impasse between the two sister departments did not assist and this culminated in the Prinsloo J interim order that was agreed upon by the parties. It was further agreed that the main application where a declaratory was sought would be heard at a later stage and would ensure that the issue of the counter-investigation would be finalised.

72. Despite the order that was made, the IPID became aware after the Mabula Team were continuing with the counter-investigation against the IPID, in the form of the investigators and myself.

73. As a result the IPID continued to engage the SAPS, the ministry as well as the office of the NDPP, in trying to ascertain whether the continuing investigation was sanctioned at a senior level.

74. There were also meetings held with General Sitole and Minister Cele, after their appointments to their respective offices, in order to bring them up to speed with these matters and also with a hope that the Minister would intervene.

75. Despite all the above efforts on the part of the IPID, as can be seen from the numerous letters to the various stakeholders, the National Commissioner only indicated that he would abide by the order of the court. The Minister on the other hand was unrepresented when the matter was argued for a final order on 21 June 2018. **See Annexure L.**

76. The matter was set down for argument before Judge Tuchten on 21 and 22 June 2018. , From the outset Phahlane agreed that he would agree to not take part or to oversee any investigation that was carried out by the members of the Mabula Team and that was also made part of the Tuchten Order that was made on 26 June 2018.

77. An important point to note is that, the National Commissioner of the SAPS, Sitole prior to the proceedings had entered a notice to abide by the order of the court and this was done in his official capacity.

78. The interpretation of this notice to abide coming from the National Commissioner's office led to the question that if the Commissioner abides by the prayers of the IPID, what locus standi did the members of the Mabula Team have to continue with an investigation that did not seem to be sanctioned by the Head of the SAPS?

79. There were arguments for both sides and at the last minute the Deputy National Commissioner, General Mfazi, gave a written undertaking that the members of the Mabula Team would no longer be involved in any "revenge-investigations" against members of the IPID that were investigating them.

80. The term "revenge-investigation" was made by Judge Tuchten in his judgment on 26 June 2018. The order was in effect drafted around section 25 of the IPID Act, which speaks to instances where an investigator has a conflict of interest in any investigation that he carries out that he would have to declare such interest. The SAPS Act does not have a similar clause that dealt with conflicts of interest. The Judge in this matter added that such members of the SAPS should also be precluded from overseeing such investigation.

81. Further the above gap in the SAPS legislation would be temporarily resolved by the Tuchten Judgment until such a time that there were appropriate regulations or standing orders or national legislation dealing with this gap.

### **Court order regarding search and seizure by Phahlane on vehicle investigation**

82. During the investigation into the Phahlane vehicle case, which he claimed he owned and others were sponsored, the IPID learnt that there were several SAPS service providers that Phahlane was conducting acts of criminality with. Amongst the service providers were Durandt Snyman, Keith Keating, the proprietor of FDA and others. The relationship between these parties was unravelled and IPID together with members of the DPCI conducted search warrants on the properties of the above-mentioned service providers on 4 December 2017. **See Annexure A17.**

83. The lawfulness of the search warrants was challenged. The applicants raised technical challenges against the affidavit utilised to authorise the search warrant by the magistrate, also that the IPID officials are not police officials and therefore cannot execute a search warrant in terms of the Criminal Procedure Act and other technicalities.

84. The matter was set down and heard on 18 June 2018 and the judgement was delivered on 3 August 2018 by Judge Kollapen. This judgment dealt thoroughly with all the technical points raised by the applicants. **See Annexure N.**

85. The applicants later brought an application for leave to appeal and it was dismissed. We have been advised by IPID's attorneys that the applicants are petitioning the Supreme Court of Appeal.

## **NPA bias**

86. The NPA under the leadership of Advocate Shaun Abrahams (**“Abrahams”**), working with Advocates Sibongile Mzinyathi (**“Mzinyathi”**), George Baloyi (**“Baloyi”**), Sello Maema (**“Maema”**), Molatlhwa Mashuga (**“Mashuga”**), Raymond Mathenjwa (**“Mathenjwa”**) has lost all credibility. I am of the belief that these advocates are a core group that has been at the forefront of enabling the capture of the criminal justice cluster through the persecution of corruption fighters. They were also involved in the protection of criminal suspects by declining to prosecute suspects investigated by the IPID in cases where their subordinates who are experienced prosecutors had recommended prosecution based on abundant evidence but the advocates would override those decisions.

87. I wrote to Abrahams on numerous occasions requesting that he review Mzinyathi's and Baloyi's decisions to undermine the decisions of Senior Public Prosecutors. Abrahams simply agreed with Mzinyathi's and Baloyi's actions. **See Annexure A18.**

88. I expressed my concern that Advocate Sello Maema (**“Maema”**) had been allowed to prosecute us as in my view his actions to prosecute us without a shred of evidence involves dishonesty and a lack of integrity.

89. Mashuga was behind the prosecution of IPID investigators and O'Sullivan, against a court order, on fabricated charges to torpedo the IPID's investigation into Phahlane.

### **The role of Hogan Lovells**

90. Hogan Lovells allowed itself to be used to hollow out public institutions, especially the IPID and the DPCI. This firm was used to get rid of people in the IPID, the DPCI. Common figures in the tainted disciplinary processes with fabricated charges include Advocate William Mokhari (“**Mokhari**”) and Advocate Mxolisi Zondo (“**Zondo**”). In IPID, Sesoko was dismissed after submitting a sick note, without even being allowed to present his case by Zondo with Mokgatle and Mokhari presiding over a sham disciplinary hearing. A similar thing had happened to Sibiya at the DPCI. The same team, except for the presiding officer, were involved in Khuba’s disciplinary hearing – the result was that Khuba was dismissed for failing to implicate me in wrongdoing.

### **Crimes against the State (CATS) unit**

91. Myself, Sesoko and Khuba were investigated by the DPCI’s Crimes Against the State (Cats) unit for fraud and defeating the ends of justice. The charges were dropped as there was never any shred of evidence. This unit was used to pursue a political agenda and to target individuals within the criminal justice cluster who stood up against state capture. It is headed by Brigadier Nyameka Xaba who reported to Ntlemenza. The same unit investigated other fabricated cases against Minister Pravin Gordhan, the so-called Rogue Unit and seems to have taken instructions or worked with SARS Commissioner Tom Moyane (“**Moyane**”). This can be seen from the incident involving SARS Legal Advisor Vlok Symington, who was prevented from leaving a boardroom until he handed back a document on the instructions of Moyane.

### **Leon Mbangwa – Nhleko’s Chief of Staff**

92. Leon / Lionel Mbangwa was employed by Nhleko as his Chief of Staff. The problem with his appointment is that he is a convicted criminal and illegal immigrant with no South African Identity Book/Card. He was convicted and sentenced to four years imprisonment for using a fraudulent ID. His security screening was processed through the IPID by Kgamanyane to avoid detection were it to be done through the SSA. This begs the question: Why would government minister want an illegal immigrant as his Chief of Staff?

**See Annexure A19.**

### **Reference group**

93. In October 2014, the Minister of Police, Nkosinathi Nhleko established a reference group to “...deal with issues of human resources, suspensions... the state of crime intelligence, administrative queries and perception of SAPS.” At the time, the Minister said the ministry would use the work done by the reference group to “...turnaround the image of the police and build public confidence in the service.” Surprisingly the reference group was comprised of public officials such as Adv Raymond Mathenjwa (“**Mathenjwa**”) from the NPA. Mathenjwa would later aggressively demand the docket into the renditions investigation – which was clearly beyond the scope of the reference group announced by Nhleko. Further, this was an undesirable situation as Mathenjwa was a senior prosecutor who was involved in deciding other matters referred to the NPA by the IPID. At the time, the IPID had already referred the docket to the National Director of Public Prosecutions for a decision on prosecution. That neither Mathenjwa nor the minister saw the clear conflict of interest which could compromise the IPID’s independence suggests that there

was some ulterior purpose to the establishment of the reference group.

### **Portfolio Committee on Police**

94. During the period of my suspension, IPID staff who were under attack by Kgamanyane directed correspondence to the Portfolio Committee on Police (“PCP”) – no response was ever received. I also wrote to the chairperson of the same committee alerting him to what was going on. I never received a response from him. **See Annexure A20.**



## **ZONDO COMMISSION OF INQUIRY**

Version 7 – 11 February 2019

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### **STATEMENT TO ZONDO COMMISSION OF INQUIRY BY ROBERT JOHN McBRIDE**

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#### **Legislative mandate**

1. The Independent Police Investigative Directorate is an independent body established by the Independent Police Investigative Directorate Act No. 1 of 2011, whose objects are set out in Section 2 thereof which, *inter alia* provides that the Independent Police Investigative Directorate ("IPID") should give effect to the provisions of Section 206(6) of the Constitution of RSA i.e. to establish an independent police complaints body established by national legislation in order to investigate alleged misconduct of, or any offence committed by a member of the Police Services in any province as well as further to ensure independent oversight of the South African Police and Municipal Police Services. There are further objectives to the Act.
2. The independence and impartiality of the Directorate is entrenched in terms of Section 4 of the IPID Act, which specifically states that the Directorate i.e. IPID functions independently from the South African Police Service.
3. Section 7(4) of the IPID Act provides that:

*“The Executive Director must refer criminal offences revealed as a result of an investigation to the National Prosecuting Authority for criminal prosecution and notify the Minister of such referral.” See Annexure A1*

4. The regulations for the operation of IPID provide, *inter alia*, that an investigator of IPID, as part of his functions, after collecting all evidence, statements and technical expert reports, if applicable, must submit a report on the investigation of the offence to the Executive Director or the relevant Provincial Head, as the case may be, containing recommendations regarding further action, which may include disciplinary measures to be taken against a member of the South African Police Service or the Municipal Police Service or criminal prosecution of such member. **See Annexure A2.**
5. The Standard Operating Procedures of IPID effective as from the 1<sup>st</sup> April 2013 and in particular in Section 7.10 thereof provide a procedure for the completion and closing of files and dockets. **See Annexure A3.**

## **Appointment**

6. I was appointed the Executive Director of IPID on the 3<sup>rd</sup> March 2014, in terms of section 6 of the IPID Act. Upon my appointment, I asked to be briefed on all high profile cases. One of the cases I was briefed on was the so called “Rendition Case”. After the briefing it became clear to me that the investigation was not conducted independently and impartially in line with IPID Act. What followed is fully traversed in my founding affidavits and replying affidavits with annexures filed in the high court, labour court and the Constitutional court to challenge my unlawful suspension. See

attached affidavits marked **Annexures A4 to A6**. The Constitutional Court found the actions of the minister to be unlawful and unconstitutional and set them aside. **See Annexure A7.**

7. Before I was suspended, I had written to the Chairperson of the Portfolio Committee on Police, Mr Francois Beukman ("**Beukman**"), asking that I be allowed to clarify and account to the Portfolio Committee on media reports about "two contradicting reports". Mr Beukman rejected this offer, citing the sub-judice rule. This was a concern to me given the fact that the doctrine of separation of powers compels him to hold the Executive and IPID to account. It is noteworthy that some members of the Portfolio Committee on Police held a meeting with the then Minister of Police, Nkosinathi Nhleko ("**Nhleko**") where my removal from office and that of then DPCI Head, Anwa Dramat ("**Dramat**") were discussed. The next day, Nhleko, made a presentation to the same portfolio committee to start a process to remove Dramat. **See Annexure A8.**
8. I pause to reflect on the events that preceded the Werksmans report which was used by Nhleko to legitimise his unlawful actions and the complicity of Sandile July ("**July**"), who compiled the said report. After Nhleko appointed Werksmans to investigate the "two reports" which he falsely alleged he had been given by the IPID, several attempts were made by July to interview IPID National Head of Investigations, Matthews Sesoko ("**Sesoko**") and IPID Lead Investigator, Innocent Khuba ("**Khuba**"). Sesoko was contacted by July and Sesoko indicated his willingness to cooperate but asked that the request be sent via email and be directed to me – he also provided the

relevant email addresses. Interestingly, when the email was sent, Khuba's and Sesoko's email addresses were typed correctly but mine was not. The email meant for me was sent to [rmcbride@ipid.co.za](mailto:rmcbride@ipid.co.za) instead of [rmcbride@ipid.gov.za](mailto:rmcbride@ipid.gov.za). Sesoko picked up on what he thought had been an error and alerted Werksmans. The next time they sent the email to [rmcbrde@ipid.gov.za](mailto:rmcbrde@ipid.gov.za) (leaving out the "i" in mcbride). One is left with no other conclusion than that Werksmans was in cahoots with Nhleko to conduct a sham investigation that would enable Nhleko to get rid of myself and Dramat by hook or crook.

9. Furthermore, Khuba reported having received multiple calls from Nhleko's Personal Assistant, Amelia Monaheng asking him to meet with Nhleko, who was so desperate to get Khuba to falsely implicate me in wrongdoing that Nhleko himself called Khuba promising him that the Ministry would cover his travelling costs to Cape Town on a weekend so that I would not find out about it. These were the actions of a government minister who was willing to use any means, including lies and deceit to capture the criminal justice system. Nhleko would later go to Parliament to perpetuate the same lies with the collusion of some members of Parliament.

### **Werksmans report**

10. Mr Israel Kgamanyane ("Kgamanyane"), who was the IPID's Free State Provincial Head at the time, was appointed to act as Executive Director.
11. After his appointment, Kgamanyane instructed Sesoko and Khuba to attend

interviews at Werksmans. Thereafter the discredited Werksmans report was leaked to the Sunday Times (Stephan Hofstatter and Mzilikazi wa Afrika) and the Sunday Independent (Solly Maphumulo). The Sunday Times and Sunday Independent ran a series of false stories to prop up Nhleko's false narrative.

12. The Werksmans report was the sole evidence against me, Khuba and Sesoko. A critique of the dodgy Werksmans report was filed with my papers when I challenged my unlawful suspension in the High Court. **See Annexure A4 to A6.** It should be noted that the author of this dodgy report, Advocate Sandile July, was later quoted by Maema in court as having as threatened to challenge his subpoena in the High Court on the basis that his report was hearsay and he could not stand by it in a court of law. So this report, which cost the taxpayers over R1,3 million was used to get rid of me, Khuba and Sesoko, was not worth the paper it was written on. **See Annexure A9.**
13. Bizarrely, Nhleko later tried to get the IPID to pay R9 million in legal costs incurred by him in his unlawful and unconstitutional attempt to remove me as IPID Executive Director.
14. On 21 May 2015, Khuba and Sesoko were suspended by Kgamanyane on the instructions of the Minister for allegedly altering the IPID's Progress Report into the Rendition Investigation, dated 22 January 2015 ("**the first report**") with myself. However, it should be noted that I did not even know about the existence of the report

that was supposedly altered as it predated my appointment as IPID Executive Director.

15. During the eighteen (18) months of my suspension, I heard about Kgamanyane wreaking havoc in the IPID by initially suspending and transferring at least eight (8) senior managers for no other reason than that they worked with me or that they deposed affidavits about information which was within their knowledge as IPID employees.
16. At the time of my return to the IPID, on 19 October 2016, the Constitutional Court had confirmed the High Court decision to declare my suspension unlawful and set it aside, I became aware that more people had been displaced at IPID under the so-called “restructuring”.

### **Suspensions, transfers and dismissals**

17. I now deal with the suspensions and transfers that occurred immediately following my suspension.
18. Matthews Sesoko (“Sesoko”) was the Chief Director: Investigations and Information Management. He is the National Head of Investigations. He made an affidavit in my application to challenge the constitutionality of section 6(3) and 6(6). He was suspended on 21 May 2015. He was charged with altering the report into Zimbabwe renditions investigation. As soon as Kgamanyane was appointed as Acting Executive

Director, he asked for the Panday case which was under investigation by the IPID. To date, this case is not on the court roll. Kgamanyane also went to Limpopo and the North West and collected dockets in which former DPCI Head, Mthandazo Berning Ntlemeza and Major-General Jan Mabula were suspects.

19. Sesoko was subsequently unlawfully dismissed by Advocate Mxolisi Zondo (“**Zondo**”), who presided over General Sibiya’s disciplinary hearing, without having presented his case. He had requested a postponement owing to illness but Zondo rejected his medical certificate and dismissed him in absentia. In his written ruling, Zondo concedes that it would have been fair to hear Sesoko’s version of events but bizarrely dismisses him with immediate effect, without allowing him to state his defence, because the medical certificate submitted by Sesoko’s counsel was from a general practitioner and not from a specialist. Furthermore, Sesoko’s dismissal was on the basis of hearsay evidence of a single witness. **See Annexure A10.**
20. Sesoko was also criminally charged with Khuba and me for fraud and defeating the ends of justice. The criminal charges were withdrawn on 01 November 2016. Upon my return to office in 2016, a settlement was reached with Sesoko’s attorneys to reinstate him to his former position.
21. Upon my return to office, I discovered that there were allegations that of the manipulation of cases to artificially inflate the performance of the IPID in my absence. Kgamanyane even went to Parliament and reported that performance was much better in the absence of the suspended and transferred, however, this was a blatant lie which was told to make himself look good. Nhleko awarded him a bonus for good

performance.

22. Innocent Khuba (“Khuba”) is the Provincial Head: Limpopo. Khuba was the lead investigator into allegations that some Zimbabweans were unlawfully handed over to Zimbabwean police, resulting in them being killed. He was suspended on 21 May 2015 on allegations of altering the investigation report into Zimbabwe ‘renditions’ with myself and Sesoko. During his suspension, he was told that he was suspended on the Minister's instructions. Khuba made an affidavit for my Constitutional Court case.
23. Prior to his dismissal, Khuba was approached by Werksmans, the Minister's PA and the Minister himself wanting to interview him and get him to implicate me. When he failed to implicate myself and Sesoko, disciplinary charges were brought against him. After six months of suspension, Khuba reached a plea bargain deal and was given a final written warning. Within a week, Khuba was summarily dismissed after he refused to falsely implicate me and Sesoko. Upon his refusal, he was dismissed with immediate effect.
24. Well before my appointment as IPID Executive Director, Ntlemeza himself had told Khuba while he was doing the rendition investigation that it was the only thing holding up his move to the DPCI after a ‘hit on Dramat’. **See Annexure A11.**



25. After Khuba was dismissed, he was approached by officers from the Hawks and promised his job back if only he made a false statement saying I had forced him to change the rendition report. Khuba recorded this approach by a Colonel Mahlangu, who is heard imploring Khuba to make a false statement to empower Ntlemeza. In the recording, Colonel Mahlangu further says Khuba would be restored to his position if he made such a statement. **See Recording 1.**
26. Khuba has since been restored to his position through an order of the Labour Court. Furthermore, the criminal charges against Khuba, Sesoko and myself were withdrawn on 01 November 2016.
27. Felicia Ntshangase (“**Ntshangase**”) is the Gauteng Provincial Head who was suspended on 8 July 2015 by Kgamanyane. Five days after my suspension, Nhleko addressed IPID management and made disparaging remarks about the judiciary. Ntshangase made an affidavit regarding this. She was suspended on allegations of nepotism for recommending the appointments of 3 officials in her office. However, the decision to appoint said officials was made by Mr Kgamanyane. The Public Service Commission later cleared Ntshangase of wrongdoing and recommended action against Kgamanyane instead.
28. Nomkhosi Netsianda (“**Netsianda**”) is the head of corporate services. She was suspended on 19 August 2015 on allegations of leaking information to the media. The

leaked information concerned the appointment of the Deputy Minister's daughter to a Deputy Director: Investigation post in the Free State, where Kgamanyane was the Provincial Head. Ms Netsianda advised against the appointment of the Deputy Minister's daughter. The documentation and her written notes ended up in a City Press report. The Public Service Commission ("**PSC**") later found that the Deputy Minister's daughter did not have the experience required for the post. Netsianda was also charged for conducting herself in a disgraceful manner by raising her voice during the Audit Committee meeting, where the funding of the IPID's case challenging Nhleko's interference with the IPID's independence was discussed. The disciplinary case against Netsianda was driven by the chairperson of the Audit Committee. **See Annexure A12.**

29. Netsianda's position was advertised in May 2016 and Molefe Matsomela ("**Matsomela**") was subsequently appointed on a six-month contract. Matsomela's security screening was done before the post was advertised, clearly indicating that advertisement and interviews were just a formality – the post was earmarked for Matsomela. During his tenure, the so-called restructuring proceeded at full speed and some people were transferred to more than one position. Matsomela never came back to work upon my return to office and he resigned thereafter. Since Matsomela's appointment was irregular, the IPID has instituted a process to recover the fruitless expenditure relating thereto in the amount of R450 456.44.

30. The reputations of the affected officials were ruined. Kgamanayane even issued a directive for IPID staff not to talk to the suspended and transferred officials. Due to the fact that there were no grounds for the transfers, three officials, Antonett Mphago (“Mphago”), Viceroy Maoka (“Maoka”) and Moses Dlamini (“Dlamini”), lodged a dispute at the General Public Service Sectoral Bargaining Council (“GPSSBC”) for their unfair transfers and a case of unlawful transfer in the Labour Court. The three were transferred for 8 months at great cost to the IPID just to punish them for having worked with me. The total cost of the transfers is in excess of R1 million, including the arbitration award which they won at the GPSSBC.
31. Pule Hillary Viceroy Maoka (“Maoka”) is the Director: Litigation Services. He made an affidavit for my Constitutional Court case. Maoka lodged a complaint regarding the conduct of Adv. Baloyi of NPA in the rendition prosecution. Mr Maoka was precautionary transferred to Limpopo on 1 September 2015 on allegations of leaking information to the media. Maoka was transferred at the same time as Antonett Mphago (to Gauteng) and Moses Dlamini (to KwaZulu-Natal). He was never charged with leaking information but was charged with the cancellation of bookings and failure to inform his supervisor and failure to report sick leave to the supervisor. Maoka was re-instated by the Labour Court on 29 April 2016, returning to his office on 06 May 2016. He was suspended on 12 May 2016 for 'providing legal assistance to his colleagues and for failure to make financial disclosure'. **See Annexure A13.**

32. Moses Dlamini (“**Dlamini**”) is the National Spokesman who was suspended on 20 June 2016. He made an affidavit in my Constitutional Court case. Dlamini was precautionary transferred to KwaZulu-Natal on 1 September 2015 on allegations of leaking information to the media. Dlamini was transferred at the same time as Antonette Mphago (to Gauteng) and Viceroy Maoka (to Limpopo). He was never charged with leaking information but was charged with the cancellation of bookings and failure to report sick leave to the supervisor timeously. Dlamini was re-instated by the Labour Court on 29 April 2016, returning to his office on 06 May 2016. He was suspended on 20 June 2016 for speaking to suspended officials (Maoka and McBride) against the directive of Kgamanyane, as well as allegations of sending disparaging emails about officials to IPID staff. Kgamanyane had issued a directive that IPID staff should not communicate with transferred and suspended officials. Dlamini was served with a letter of intent to permanently transfer him to Eastern Cape within 3 days of returning to the office. After objecting, he was transferred to the post of Director: Investigations at National Office effective 1 July 2016 as part of the “restructuring” After he objected to the transfer, he was suspended. **See Annexure A13.**
33. Dlamini's disciplinary hearing was presided over by the Limpopo Director of Public Prosecutions, Advocate Ivy Thenga (“**Thenga**”) to whom IPID makes referrals of cases investigated by it – a clear conflict of interest. Thenga said that she had been instructed to finalise the hearing over the weekend. Dlamini was reinstated upon my return to office.

34. Antonett Mphago (“Mphago”) is the Director: Executive Support in the office of the Executive Director. She was precautionary transferred to Gauteng on allegations of leaking information to the media. The said information related to the appointment of the daughter of the Deputy Minister of Police's daughter to a post of Deputy Director: Investigations in the Free State. She was transferred to Gauteng provincial office to the position of Deputy Director: Corporate Services position pending finalisation of investigations. She was never charged with leaking of information nor notified of the outcome of the investigation. On 1 December 2015, Mphago's transfer was uplifted after she had written to Kgamanyane informing him that 60 days had elapsed since her transfer and that no charges had been brought against her. She was denied access to her office and had to squat in the passage. On 30 June 2016 she was transferred to a position of Director: Compliance Monitoring, as a result of 'restructuring'. Mphago was under investigation on allegations of meeting/talking to with me on my visit to the national office on 9 June 2016. **See Annexure A13.**

## **Restructuring**

35. It is clear that Kgamanyane subscribed to the view that “If it works – break it!”, as there is no other way to comprehend the rationale behind the restructuring that went on during his tenure. He was like a mad scientist, transferring people to positions for which that had no competencies or experience. Some people even had to seek medical attention as a result of the senseless restructuring.
36. Vinesh Boodhoo (**“Boodhoo”**) was the Director: Investigation in Gauteng. He was

appointed by Ntshangase with two other people, who were forced out of IPID due to their association with Ms Ntshangase. Dan Morema (“Morema”) was appointed to act in Ntshangase's position, while she was on suspension. Morema victimised Boodhoo, as a result, he lodged a complaint against Morema. Boodhoo received correspondence informing him that the outcome of the investigation of his complaint was that he should be transferred out of Gauteng. Boodhoo was permanently transferred to the post of Director: Investigations in the Eastern Cape effective 1 July 2016 as a result of “restructuring”.

37. Marianne Moroasui (**“Moroasui”**) is the Chief Director: Legal Services. In March 2016 Kgamanyane had the Provincial Head of Kimberly and the then Deputy Provincial Head of the Western Cape take over the running of Legal Services whilst she was in the office. During the purported restructuring of the IPID, she was informed that she would be transferred to a position of Provincial Head in either Mpumalanga or Kimberley. She resisted the move and referred the matter to the PSA. Whilst still in consultation with the Kgamanyane, he made the decision to finally transfer her to Kimberley as Provincial Head. She was instructed to commence in Kimberley on 1 July 2016. She did not comply with the instruction and continued reporting to the National Office and one day she went out to lunch and upon her return her “biometric access” was deactivated and she could not access the National Office. Moroasui was informed by Matsomela, who was at the time acting as the head of Corporate Services that she had to report to Kimberly. Her Colleagues had to bring her handbag,

work bag and other personal belongings to her on the street as she was refused access, even to the National Office parking.

38. Zuziwe Cele (**“Cele”**) is the Deputy Director: Supply Chain Management. She was permanently transferred to Deputy Director: Corporate Services in Gauteng Province effective 1 August 2016 as a result of restructuring. She was seen to be a stumbling block to procurement.
39. Lindokuhle Ngcongco (**“Ngcongco”**) was the Chief Financial Officer (“CFO”) was transferred to Gauteng as the Provincial Head to head investigations. She was perceived to be a stumbling block to Kgamanyane’s plans for procurement. She was also opposed to the IPID paying for legal costs incurred by the Minister of Police (Nhleko). She has since left the IPID.
40. Mamodishe Molope (**“Molope”**) is the Chief Director: Compliance Monitoring and Compliance Management. She was transferred to Mpumalanga as Provincial Head to lead investigations, as part of restructuring.
41. Quite a number of other junior people were also transferred from their positions as a result of “restructuring” initiated by Kgamanyane with the approval of former Minister of Police, Nkosinathi Nhleko.

## **Return to office**

42. I returned to office on 19 October 2016 and requested Kgamanyane for a handover report. He was quite petulant and refused to give me such a report. He never returned to work and was irregularly transferred by Nhleko to the DPCI. He was accepted by former Hawks Head, Mthandazo Ntlemeza and appointed to the DPCI structure in the Free State. I had no say in Kgamanyane's transfer, which was done by Nhleko and Ntlemeza without any consultation. There is no greater example of interference in the operations of the IPID by a minister who had been found to have acted unlawfully and unconstitutionally by the Constitutional Court. To make matters worse, Kgamanyane was facing disciplinary action for the havoc he had caused at IPID. I wrote to Ntlemeza about my concerns. See **Annexure A14**.

43. Nhleko had awarded Kgamanyane a performance bonus which was clearly a gratification. He was the only one in IPID to be awarded a performance bonus.

## **Infiltration of IPID by Crime Intelligence**

44. I also found that IPID had been infiltrated by Crime Intelligence in the form of Tlou Kgomo ("Kgomo") and Emily Motsugi ("**Motsugi**"). Kgomo had been appointed as Director: Investigations. He was appointed to act as head of investigations in Sesoko's position. The two beat a hasty retreat back to Crime Intelligence soon after my return to office. My



next encounter with Kgomo was in Parliament where he was part of Phahlane's team to counter IPID's investigations. Kgomo would later approach IPID investigators, Mandla Mahlangu (**"Mahlangu"**) and Cedrick Nkabinde (**"Nkabinde"**), to offer them Brigadier positions to induce them to make false statements to implicate IPID managers in wrongdoing. In a recording made by one of the investigators, Kgomo can be heard making such an offer to Mahlangu. He confirms to Mahlangu that he is working with the North West team led by Major General Jan Mabula (**"Mabula"**) investigating a concocted case that would bring me "down", along with other IPID investigators and torpedo the investigation against Phahlane. Kgomo also took Mahlangu to Potchefstroom to meet Mabula. **See Annexure A15 (there's also a recording).**

45. Upon my return from my suspension on 19 October 2016 I was alerted of irregularities on how investigations had been conducted during the time when I was on suspension. There were allegations that certain cases that were being investigated by the IPID had been pre-maturely closed without carrying out proper investigation processes as contained in the Standard Operating Procedures. This was done in certain instances to push the statistics and other acts that amounted to defeating the ends of justice. These cases were termed "special closures". This was intended to manipulate statistics to give an impression that performance had been better under Kgamanyane. I instructed our Integrity Strengthening Unit to investigate these allegations. The Auditor-General also flagged some of these cases. One employee has already been dismissed as a result of this investigation. Another senior employee, Dan Morema, resigned when he was approached to make a statement. **See Annexure A16.**

## **Investigation into Phahlane**

46. Soon after my arrival I received a complaint from Paul O'Sullivan ("**O'Sullivan**"). The complaint was about a case of corruption and money laundering that had been opened against the then Acting National Commissioner of Police, General Phahlane. This case was first reported to the IPID before my arrival.
47. O'Sullivan had brought the case to the attention of Mr Kgamanyane, the Acting Executive Director, in March 2016 while I was on suspension. The complaint brought by O'Sullivan was that the case had not been investigated and he requested me to intervene and ensure that matter was investigated. One of the strange things that I found upon my return was that two cases had been opened, one as a duplicate of the other and vice versa – and both were then closed as duplicates of each other.
48. At the end of November 2016, a Task Team was formed that was to investigate the cases of corruption and money laundering that were levelled against General Phahlane. The Task Team comprised of Mandla Mahlangu, Temane Binang, Mantsha Raphesu and Cedrick Nkabinde.
49. The case to be investigated had to do with the construction of Phahlane's house at Sable Hills Estate allegedly with funds that were provided by a service provider to the SAPS. There was also the case of a music system worth R80 000 that was alleged to have been paid from the account of a service provider to the SAPS. Further there was a case of

vehicles in Phahlane's possession that, according to him, were either purchased and owned by him or sponsored for his use. The IPID investigated all cases and there was clear evidence of a corrupt relationship between Phahlane and service providers to the SAPS.

50. During January 2017 a search warrant was executed at the Sable Hills home of Phahlane. The purpose of the search was to identify the music system that was bought and paid for by a SAPS service provider. Present at the search was the person who had installed the music system, this was for purposes of identifying that the music system in Phahlane's house was the same music system that had been purchased by funds from a SAPS service provider and that he had installed in Phahlane's house.

51. After the search warrant was executed at Phahlane's house, he initiated a civil suit challenging the lawfulness of the search warrant.

52. The parties have exchanged papers in this matter and it was dormant since the latter part of 2017. Recently one of the original Task Team members, Cedrick Nkabinde, who was approached by Kgomo as mentioned in preceding paragraphs, deposed a supporting affidavit for Phahlane whilst he was undergoing a disciplinary process for several acts of misconduct. Nkabinde resigned with immediate effect on 19 October 2018, and his disciplinary hearing did not proceed.

### 53. Counter-investigation

54. I want to pause here and go back to when the initial investigation into the case of corruption and money laundering were initiated against Phahlane. O'Sullivan was the complainant and also because of his background in the matter he accompanied IPID investigators to the Sable Hills Estate to point out several witnesses to the case that the IPID was investigating. On some of the occasions he accompanied the IPID investigators together with his associate and attorney Sarah-Jane Trent.

55. As a result of the on-going investigations by the IPID with the assistance of O'Sullivan and Trent, Phahlane used his powers as the Acting National Commissioner to set up a team from the North West (Mabula Team) to start a counter-investigation on the IPID investigation against himself.

56. This SAPS counter-investigation was authorised under the guise of a security breach against the Acting National Commissioner. The North West Provincial Commissioner together with the Mabula Team concocted a report that was utilised to authorise their travel to Gauteng to investigate the purported security breach. Crime Intelligence ("CI") had earlier done an investigation of the alleged security breach and it found that there was in fact no security breach. The officers who did the investigation made statements to this effect. As a result of the concocted report, General Makhele was charged with defeating the ends of justice. This case is still with the NPA.

57. The Mabula Team then proceeded to counter the investigation of the IPID by approaching all the witnesses in the IPID investigation to get them to change their initial version against Phahlane and the SAPS service providers and their involvement in the construction of Phahlane's house and the cars.
58. Their counter-investigation resulted in a case being opened, Kameelfdrift 12/01/2017, against O'Sullivan and his associate Trent. The charges against them were, amongst others of impersonating IPID officials in terms of section 33(5) of the IPID Act, these were clearly trumped up charges. The charges were that they had visited Phahlane's Sable Hills home together with IPID investigators and that during the said visit they had impersonated IPID investigators.
59. During Trent's arrest her mobile phone was unlawfully confiscated and booked in for investigation in order to try and support the charges that were being fabricated against the pair and later on the IPID investigators that were added.
60. O'Sullivan and Trent made a number of appearances in the Pretoria Magistrate Court, in the case emanating from the Kameelfdrift case and around May 2017. Brigadier Ncube, one of the members of the Mabula Team made contact with two of the IPID investigators. He informed them that he was the investigator in the Kameelfdrift 12/01/2017 case and that he intended on adding them as co-accused in the case already before the Pretoria Magistrate Court.

61. Trent's phone was stolen by the Mabula Team and taken to Israel to be downloaded. The contents were leaked to the Sunday Times in a bid to falsely implicate myself and my investigators in wrongdoing to protect Phahlane.

62. There was a litany of charges that were brought against Mahlangu and Binang who were members of the IPID Task Team, at the top of the list were charges of contravening section 33(5) and section 33(2) of the IPID Act. The two investigators were added in State versus Sarah-Jane Trent and three others, which was held the Pretoria Magistrate Court. When Ncube had earlier come to IPID to obtain the statements of Mahlangu and Binang, I asked him why he was in Gauteng as he was based in the North West, he opened a case of intimidation against me.

63. The State Advocate in the matter was a Molatlhwa Mashuga ("**Mashuga**"), who also has some links to the NW SAPS team. The case was remanded on numerous times at the behest of the State, apparently for further investigations. After the numerous postponements for further investigations by Mashuga, the defence in October 2017, i.e IPID made an application that the matter be struck off the roll in terms of section 342A(3)(c) of the Criminal Procedure Act, No 51 of 1977, which deals with unreasonable delays in a matter before a court "

*"(3) If the court finds that the completion of the proceedings is being delayed unreasonably, the court may issue any such order as it deems fit in order to*

*eliminate the delay and any prejudice arising from it or to prevent further delay or prejudice, including an order-*

(a) ...;

(b) ...;

(c) *where the accused has not yet pleaded to the charge, that the case be struck off the roll and the prosecution not be resumed or instituted de novo without the written instruction of the attorney-general;”*

64. The Magistrate made an order that the matter be struck off the roll in terms of the above-mentioned section. The matter could only be re-enrolled with the written instruction of the NDPP, Shaun Abrahams at the time. This order by the Magistrate was made In October 2017.

65. It's important to indicate that neither the order by the Magistrate made in terms of section 342A(3)(c) of the Criminal Procedure Act nor the Prinsloo J Order, made in November 2017, stopped the Mabula Team from continuing with their counter investigation. This was clear when immediately after both orders Ncube took another warning statement, this time against Mantsha Raphesu and threatened to arrest the other members of the Task Team including myself, but despite all the threats the fabricated case is yet to be re-enrolled, further proving that the charges are baseless and are trumped up.

**Interdict and main application wrt the counter-investigation (Court order in favour of the IPID)**

66. With the on-going counter-investigation by the Mabula Team, it was clear that the intention was to scupper the IPID investigation and the IPID brought an urgent application before the North Gauteng High Court in order to stop the counter-investigation and also to seek a declaratory that members of the SAPS that were themselves subjects of an investigation by the IPID should not investigate or oversee an investigation against members of the IPID.

67. An urgent interdict was sought against the Phahlane, at the time, the North West Provincial Commissioner, Mabula and Ncube. Later, in the main application, the other members of the Mabula Team were added as respondents as they were conducting this counter-investigation against members of the IPID.

68. Throughout the exchange of papers in this matter, the Mabula Team insisted that the cases that the IPID stated they were investigating against them were “cold cases”. This was proven to be false as a list was annexed in the papers to show the status of the cases against the members of the Mabula Team. It is, in any event, disingenuous for Mabula to say as the evidence shows that the only reason the cases had not progressed was due to them being suppressed. There is a **recording** in which one of the suspects admits to torturing the deceased in the Makau case and he implicates Mabula. See **Recording 3**



69. An agreement was reached by the parties and it was made the order of the court by Prinsloo J. At the time the order was made, Phahlane had been suspended as the Acting National Commissioner and General Mothiba had been appointed to act. Prior to the Prinsloo J order that was made on 28 November 2017, Mothiba had also been engaged on countless occasions to try and resolve the matter outside of the courts.

70. Prior the making of the Prinsloo J order, there had been countless engagements with the different senior management within SAPS in a bid to avoid litigation and come to an amicable solution to the number of civil suits that were in the courts. The Portfolio Committee on Police also tried to intervene by requesting an appearance and briefing by Phahlane, whilst he was still acting National Commissioner, and his team and the Executive Director and his team in order to try and resolve the battle that was playing out between the two departments.

71. All of the engagements and attempts to amicably resolve the impasse between the two sister departments did not assist and this culminated in the Prinsloo J interim order that was agreed upon by the parties. It was further agreed that the main application where a declaratory was sought would be heard at a later stage and would ensure that the issue of the counter-investigation would be finalised.

72. Despite the order that was made, the IPID became aware after the Mabula Team were continuing with the counter-investigation against the IPID, in the form of the investigators and myself.

73. As a result the IPID continued to engage the SAPS, the ministry as well as the office of the NDPP, in trying to ascertain whether the continuing investigation was sanctioned at a senior level.

74. There were also meetings held with General Sitole and Minister Cele, after their appointments to their respective offices, in order to bring them up to speed with these matters and also with a hope that the Minister would intervene.

75. Despite all the above efforts on the part of the IPID, as can be seen from the numerous letters to the various stakeholders, the National Commissioner only indicated that he would abide by the order of the court. The Minister on the other hand was unrepresented when the matter was argued for a final order on 21 June 2018. **See Annexure L.**

76. The matter was set down for argument before Judge Tuchten on 21 and 22 June 2018. , From the outset Phahlane agreed that he would agree to not take part or to oversee any investigation that was carried out by the members of the Mabula Team and that was also made part of the Tuchten Order that was made on 26 June 2018.

77. An important point to note is that, the National Commissioner of the SAPS, Sitole prior to the proceedings had entered a notice to abide by the order of the court and this was done in his official capacity.

78. The interpretation of this notice to abide coming from the National Commissioner's office led to the question that if the Commissioner abides by the prayers of the IPID, what locus standi did the members of the Mabula Team have to continue with an investigation that did not seem to be sanctioned by the Head of the SAPS?

79. There were arguments for both sides and at the last minute the Deputy National Commissioner, General Mfazi, gave a written undertaking that the members of the Mabula Team would no longer be involved in any "revenge-investigations" against members of the IPID that were investigating them.

80. The term "revenge-investigation" was made by Judge Tuchten in his judgment on 26 June 2018. The order was in effect drafted around section 25 of the IPID Act, which speaks to instances where an investigator has a conflict of interest in any investigation that he carries out that he would have to declare such interest. The SAPS Act does not have a similar clause that dealt with conflicts of interest. The Judge in this matter added that such members of the SAPS should also be precluded from overseeing such investigation.

81. Further the above gap in the SAPS legislation would be temporarily resolved by the Tuchten Judgment until such a time that there were appropriate regulations or standing orders or national legislation dealing with this gap.

### **Court order regarding search and seizure by Phahlane on vehicle investigation**

82. During the investigation into the Phahlane vehicle case, which he claimed he owned and others were sponsored, the IPID learnt that there were several SAPS service providers that Phahlane was conducting acts of criminality with. Amongst the service providers were Durandt Snyman, Keith Keating, the proprietor of FDA and others. The relationship between these parties was unravelled and IPID together with members of the DPCI conducted search warrants on the properties of the above-mentioned service providers on 4 December 2017. **See Annexure A17.**

83. The lawfulness of the search warrants was challenged. The applicants raised technical challenges against the affidavit utilised to authorise the search warrant by the magistrate, also that the IPID officials are not police officials and therefore cannot execute a search warrant in terms of the Criminal Procedure Act and other technicalities.

84. The matter was set down and heard on 18 June 2018 and the judgement was delivered on 3 August 2018 by Judge Kollapen. This judgment dealt thoroughly with all the technical points raised by the applicants. **See Annexure N.**

85. The applicants later brought an application for leave to appeal and it was dismissed. We have been advised by IPID's attorneys that the applicants are petitioning the Supreme Court of Appeal.

## **NPA bias**

86. The NPA under the leadership of Advocate Shaun Abrahams (**“Abrahams”**), working with Advocates Sibongile Mzinyathi (**“Mzinyathi”**), George Baloyi (**“Baloyi”**), Sello Maema (**“Maema”**), Molatlhwa Mashuga (**“Mashuga”**), Raymond Mathenjwa (**“Mathenjwa”**) has lost all credibility. I am of the belief that these advocates are a core group that has been at the forefront of enabling the capture of the criminal justice cluster through the persecution of corruption fighters. They were also involved in the protection of criminal suspects by declining to prosecute suspects investigated by the IPID in cases where their subordinates who are experienced prosecutors had recommended prosecution based on abundant evidence but the advocates would override those decisions.

87. I wrote to Abrahams on numerous occasions requesting that he review Mzinyathi's and Baloyi's decisions to undermine the decisions of Senior Public Prosecutors. Abrahams simply agreed with Mzinyathi's and Baloyi's actions. **See Annexure A18.**

88. I expressed my concern that Advocate Sello Maema (**“Maema”**) had been allowed to prosecute us as in my view his actions to prosecute us without a shred of evidence involves dishonesty and a lack of integrity.

89. Mashuga was behind the prosecution of IPID investigators and O'Sullivan, against a court order, on fabricated charges to torpedo the IPID's investigation into Phahlane.

### **The role of Hogan Lovells**

90. Hogan Lovells allowed itself to be used to hollow out public institutions, especially the IPID and the DPCI. This firm was used to get rid of people in the IPID, the DPCI. Common figures in the tainted disciplinary processes with fabricated charges include Advocate William Mokhari (“**Mokhari**”) and Advocate Mxolisi Zondo (“**Zondo**”). In IPID, Sesoko was dismissed after submitting a sick note, without even being allowed to present his case by Zondo with Mokgatle and Mokhari presiding over a sham disciplinary hearing. A similar thing had happened to Sibiya at the DPCI. The same team, except for the presiding officer, were involved in Khuba’s disciplinary hearing – the result was that Khuba was dismissed for failing to implicate me in wrongdoing.

### **Crimes against the State (CATS) unit**

91. Myself, Sesoko and Khuba were investigated by the DPCI’s Crimes Against the State (Cats) unit for fraud and defeating the ends of justice. The charges were dropped as there was never any shred of evidence. This unit was used to pursue a political agenda and to target individuals within the criminal justice cluster who stood up against state capture. It is headed by Brigadier Nyameka Xaba who reported to Ntlemenza. The same unit investigated other fabricated cases against Minister Pravin Gordhan, the so-called Rogue Unit and seems to have taken instructions or worked with SARS Commissioner Tom Moyane (“**Moyane**”). This can be seen from the incident involving SARS Legal Advisor Vlok Symington, who was prevented from leaving a boardroom until he handed back a document on the instructions of Moyane.

### **Leon Mbangwa – Nhleko’s Chief of Staff**

92. Leon / Lionel Mbangwa was employed by Nhleko as his Chief of Staff. The problem with his appointment is that he is a convicted criminal and illegal immigrant with no South African Identity Book/Card. He was convicted and sentenced to four years imprisonment for using a fraudulent ID. His security screening was processed through the IPID by Kgamanyane to avoid detection were it to be done through the SSA. This begs the question: Why would government minister want an illegal immigrant as his Chief of Staff?

**See Annexure A19.**

### **Reference group**

93. In October 2014, the Minister of Police, Nkosinathi Nhleko established a reference group to “...deal with issues of human resources, suspensions... the state of crime intelligence, administrative queries and perception of SAPS.” At the time, the Minister said the ministry would use the work done by the reference group to “...turnaround the image of the police and build public confidence in the service.” Surprisingly the reference group was comprised of public officials such as Adv Raymond Mathenjwa (“**Mathenjwa**”) from the NPA. Mathenjwa would later aggressively demand the docket into the renditions investigation – which was clearly beyond the scope of the reference group announced by Nhleko. Further, this was an undesirable situation as Mathenjwa was a senior prosecutor who was involved in deciding other matters referred to the NPA by the IPID. At the time, the IPID had already referred the docket to the National Director of Public Prosecutions for a decision on prosecution. That neither Mathenjwa nor the minister saw the clear conflict of interest which could compromise the IPID’s independence suggests that there

was some ulterior purpose to the establishment of the reference group.

### **Portfolio Committee on Police**

94. During the period of my suspension, IPID staff who were under attack by Kgamanyane directed correspondence to the Portfolio Committee on Police (“PCP”) – no response was ever received. I also wrote to the chairperson of the same committee alerting him to what was going on. I never received a response from him. **See Annexure A20.**



## **ZONDO COMMISSION OF INQUIRY**

Version 7 – 11 February 2019

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### **STATEMENT TO ZONDO COMMISSION OF INQUIRY BY ROBERT JOHN McBRIDE**

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#### **Legislative mandate**

1. The Independent Police Investigative Directorate is an independent body established by the Independent Police Investigative Directorate Act No. 1 of 2011, whose objects are set out in Section 2 thereof which, *inter alia* provides that the Independent Police Investigative Directorate ("IPID") should give effect to the provisions of Section 206(6) of the Constitution of RSA i.e. to establish an independent police complaints body established by national legislation in order to investigate alleged misconduct of, or any offence committed by a member of the Police Services in any province as well as further to ensure independent oversight of the South African Police and Municipal Police Services. There are further objectives to the Act.
2. The independence and impartiality of the Directorate is entrenched in terms of Section 4 of the IPID Act, which specifically states that the Directorate i.e. IPID functions independently from the South African Police Service.
3. Section 7(4) of the IPID Act provides that:

*“The Executive Director must refer criminal offences revealed as a result of an investigation to the National Prosecuting Authority for criminal prosecution and notify the Minister of such referral.” See Annexure A1*

4. The regulations for the operation of IPID provide, *inter alia*, that an investigator of IPID, as part of his functions, after collecting all evidence, statements and technical expert reports, if applicable, must submit a report on the investigation of the offence to the Executive Director or the relevant Provincial Head, as the case may be, containing recommendations regarding further action, which may include disciplinary measures to be taken against a member of the South African Police Service or the Municipal Police Service or criminal prosecution of such member. **See Annexure A2.**
5. The Standard Operating Procedures of IPID effective as from the 1<sup>st</sup> April 2013 and in particular in Section 7.10 thereof provide a procedure for the completion and closing of files and dockets. **See Annexure A3.**

## **Appointment**

6. I was appointed the Executive Director of IPID on the 3<sup>rd</sup> March 2014, in terms of section 6 of the IPID Act. Upon my appointment, I asked to be briefed on all high profile cases. One of the cases I was briefed on was the so called “Rendition Case”. After the briefing it became clear to me that the investigation was not conducted independently and impartially in line with IPID Act. What followed is fully traversed in my founding affidavits and replying affidavits with annexures filed in the high court, labour court and the Constitutional court to challenge my unlawful suspension. See

attached affidavits marked **Annexures A4 to A6**. The Constitutional Court found the actions of the minister to be unlawful and unconstitutional and set them aside. **See Annexure A7.**

7. Before I was suspended, I had written to the Chairperson of the Portfolio Committee on Police, Mr Francois Beukman ("**Beukman**"), asking that I be allowed to clarify and account to the Portfolio Committee on media reports about "two contradicting reports". Mr Beukman rejected this offer, citing the sub-judice rule. This was a concern to me given the fact that the doctrine of separation of powers compels him to hold the Executive and IPID to account. It is noteworthy that some members of the Portfolio Committee on Police held a meeting with the then Minister of Police, Nkosinathi Nhleko ("**Nhleko**") where my removal from office and that of then DPCI Head, Anwa Dramat ("**Dramat**") were discussed. The next day, Nhleko, made a presentation to the same portfolio committee to start a process to remove Dramat. **See Annexure A8.**
8. I pause to reflect on the events that preceded the Werksmans report which was used by Nhleko to legitimise his unlawful actions and the complicity of Sandile July ("**July**"), who compiled the said report. After Nhleko appointed Werksmans to investigate the "two reports" which he falsely alleged he had been given by the IPID, several attempts were made by July to interview IPID National Head of Investigations, Matthews Sesoko ("**Sesoko**") and IPID Lead Investigator, Innocent Khuba ("**Khuba**"). Sesoko was contacted by July and Sesoko indicated his willingness to cooperate but asked that the request be sent via email and be directed to me – he also provided the

relevant email addresses. Interestingly, when the email was sent, Khuba's and Sesoko's email addresses were typed correctly but mine was not. The email meant for me was sent to [rmcbride@ipid.co.za](mailto:rmcbride@ipid.co.za) instead of [rmcbride@ipid.gov.za](mailto:rmcbride@ipid.gov.za). Sesoko picked up on what he thought had been an error and alerted Werksmans. The next time they sent the email to [rmcbrde@ipid.gov.za](mailto:rmcbrde@ipid.gov.za) (leaving out the "i" in mcbride). One is left with no other conclusion than that Werksmans was in cahoots with Nhleko to conduct a sham investigation that would enable Nhleko to get rid of myself and Dramat by hook or crook.

9. Furthermore, Khuba reported having received multiple calls from Nhleko's Personal Assistant, Amelia Monaheng asking him to meet with Nhleko, who was so desperate to get Khuba to falsely implicate me in wrongdoing that Nhleko himself called Khuba promising him that the Ministry would cover his travelling costs to Cape Town on a weekend so that I would not find out about it. These were the actions of a government minister who was willing to use any means, including lies and deceit to capture the criminal justice system. Nhleko would later go to Parliament to perpetuate the same lies with the collusion of some members of Parliament.

### **Werksmans report**

10. Mr Israel Kgamanyane ("Kgamanyane"), who was the IPID's Free State Provincial Head at the time, was appointed to act as Executive Director.
11. After his appointment, Kgamanyane instructed Sesoko and Khuba to attend

interviews at Werksmans. Thereafter the discredited Werksmans report was leaked to the Sunday Times (Stephan Hofstatter and Mzilikazi wa Afrika) and the Sunday Independent (Solly Maphumulo). The Sunday Times and Sunday Independent ran a series of false stories to prop up Nhleko's false narrative.

12. The Werksmans report was the sole evidence against me, Khuba and Sesoko. A critique of the dodgy Werksmans report was filed with my papers when I challenged my unlawful suspension in the High Court. **See Annexure A4 to A6.** It should be noted that the author of this dodgy report, Advocate Sandile July, was later quoted by Maema in court as having as threatened to challenge his subpoena in the High Court on the basis that his report was hearsay and he could not stand by it in a court of law. So this report, which cost the taxpayers over R1,3 million was used to get rid of me, Khuba and Sesoko, was not worth the paper it was written on. **See Annexure A9.**
13. Bizarrely, Nhleko later tried to get the IPID to pay R9 million in legal costs incurred by him in his unlawful and unconstitutional attempt to remove me as IPID Executive Director.
14. On 21 May 2015, Khuba and Sesoko were suspended by Kgamanyane on the instructions of the Minister for allegedly altering the IPID's Progress Report into the Rendition Investigation, dated 22 January 2015 ("**the first report**") with myself. However, it should be noted that I did not even know about the existence of the report

that was supposedly altered as it predated my appointment as IPID Executive Director.

15. During the eighteen (18) months of my suspension, I heard about Kgamanyane wreaking havoc in the IPID by initially suspending and transferring at least eight (8) senior managers for no other reason than that they worked with me or that they deposed affidavits about information which was within their knowledge as IPID employees.
16. At the time of my return to the IPID, on 19 October 2016, the Constitutional Court had confirmed the High Court decision to declare my suspension unlawful and set it aside, I became aware that more people had been displaced at IPID under the so-called “restructuring”.

### **Suspensions, transfers and dismissals**

17. I now deal with the suspensions and transfers that occurred immediately following my suspension.
18. Matthews Sesoko (“Sesoko”) was the Chief Director: Investigations and Information Management. He is the National Head of Investigations. He made an affidavit in my application to challenge the constitutionality of section 6(3) and 6(6). He was suspended on 21 May 2015. He was charged with altering the report into Zimbabwe renditions investigation. As soon as Kgamanyane was appointed as Acting Executive

Director, he asked for the Panday case which was under investigation by the IPID. To date, this case is not on the court roll. Kgamanyane also went to Limpopo and the North West and collected dockets in which former DPCI Head, Mthandazo Berning Ntlemeza and Major-General Jan Mabula were suspects.

19. Sesoko was subsequently unlawfully dismissed by Advocate Mxolisi Zondo (“**Zondo**”), who presided over General Sibiya’s disciplinary hearing, without having presented his case. He had requested a postponement owing to illness but Zondo rejected his medical certificate and dismissed him in absentia. In his written ruling, Zondo concedes that it would have been fair to hear Sesoko’s version of events but bizarrely dismisses him with immediate effect, without allowing him to state his defence, because the medical certificate submitted by Sesoko’s counsel was from a general practitioner and not from a specialist. Furthermore, Sesoko’s dismissal was on the basis of hearsay evidence of a single witness. **See Annexure A10.**
20. Sesoko was also criminally charged with Khuba and me for fraud and defeating the ends of justice. The criminal charges were withdrawn on 01 November 2016. Upon my return to office in 2016, a settlement was reached with Sesoko’s attorneys to reinstate him to his former position.
21. Upon my return to office, I discovered that there were allegations that of the manipulation of cases to artificially inflate the performance of the IPID in my absence. Kgamanyane even went to Parliament and reported that performance was much better in the absence of the suspended and transferred, however, this was a blatant lie which was told to make himself look good. Nhleko awarded him a bonus for good

performance.

22. Innocent Khuba (“Khuba”) is the Provincial Head: Limpopo. Khuba was the lead investigator into allegations that some Zimbabweans were unlawfully handed over to Zimbabwean police, resulting in them being killed. He was suspended on 21 May 2015 on allegations of altering the investigation report into Zimbabwe ‘renditions’ with myself and Sesoko. During his suspension, he was told that he was suspended on the Minister's instructions. Khuba made an affidavit for my Constitutional Court case.
23. Prior to his dismissal, Khuba was approached by Werksmans, the Minister's PA and the Minister himself wanting to interview him and get him to implicate me. When he failed to implicate myself and Sesoko, disciplinary charges were brought against him. After six months of suspension, Khuba reached a plea bargain deal and was given a final written warning. Within a week, Khuba was summarily dismissed after he refused to falsely implicate me and Sesoko. Upon his refusal, he was dismissed with immediate effect.
24. Well before my appointment as IPID Executive Director, Ntlemeza himself had told Khuba while he was doing the rendition investigation that it was the only thing holding up his move to the DPCI after a ‘hit on Dramat’. **See Annexure A11.**



25. After Khuba was dismissed, he was approached by officers from the Hawks and promised his job back if only he made a false statement saying I had forced him to change the rendition report. Khuba recorded this approach by a Colonel Mahlangu, who is heard imploring Khuba to make a false statement to empower Ntlemeza. In the recording, Colonel Mahlangu further says Khuba would be restored to his position if he made such a statement. **See Recording 1.**
26. Khuba has since been restored to his position through an order of the Labour Court. Furthermore, the criminal charges against Khuba, Sesoko and myself were withdrawn on 01 November 2016.
27. Felicia Ntshangase (“**Ntshangase**”) is the Gauteng Provincial Head who was suspended on 8 July 2015 by Kgamanyane. Five days after my suspension, Nhleko addressed IPID management and made disparaging remarks about the judiciary. Ntshangase made an affidavit regarding this. She was suspended on allegations of nepotism for recommending the appointments of 3 officials in her office. However, the decision to appoint said officials was made by Mr Kgamanyane. The Public Service Commission later cleared Ntshangase of wrongdoing and recommended action against Kgamanyane instead.
28. Nomkhosi Netsianda (“**Netsianda**”) is the head of corporate services. She was suspended on 19 August 2015 on allegations of leaking information to the media. The

leaked information concerned the appointment of the Deputy Minister's daughter to a Deputy Director: Investigation post in the Free State, where Kgamanyane was the Provincial Head. Ms Netsianda advised against the appointment of the Deputy Minister's daughter. The documentation and her written notes ended up in a City Press report. The Public Service Commission ("**PSC**") later found that the Deputy Minister's daughter did not have the experience required for the post. Netsianda was also charged for conducting herself in a disgraceful manner by raising her voice during the Audit Committee meeting, where the funding of the IPID's case challenging Nhleko's interference with the IPID's independence was discussed. The disciplinary case against Netsianda was driven by the chairperson of the Audit Committee. **See Annexure A12.**

29. Netsianda's position was advertised in May 2016 and Molefe Matsomela ("**Matsomela**") was subsequently appointed on a six-month contract. Matsomela's security screening was done before the post was advertised, clearly indicating that advertisement and interviews were just a formality – the post was earmarked for Matsomela. During his tenure, the so-called restructuring proceeded at full speed and some people were transferred to more than one position. Matsomela never came back to work upon my return to office and he resigned thereafter. Since Matsomela's appointment was irregular, the IPID has instituted a process to recover the fruitless expenditure relating thereto in the amount of R450 456.44.

30. The reputations of the affected officials were ruined. Kgamanayane even issued a directive for IPID staff not to talk to the suspended and transferred officials. Due to the fact that there were no grounds for the transfers, three officials, Antonett Mphago (“Mphago”), Viceroy Maoka (“Maoka”) and Moses Dlamini (“Dlamini”), lodged a dispute at the General Public Service Sectoral Bargaining Council (“GPSSBC”) for their unfair transfers and a case of unlawful transfer in the Labour Court. The three were transferred for 8 months at great cost to the IPID just to punish them for having worked with me. The total cost of the transfers is in excess of R1 million, including the arbitration award which they won at the GPSSBC.
31. Pule Hillary Viceroy Maoka (“Maoka”) is the Director: Litigation Services. He made an affidavit for my Constitutional Court case. Maoka lodged a complaint regarding the conduct of Adv. Baloyi of NPA in the rendition prosecution. Mr Maoka was precautionary transferred to Limpopo on 1 September 2015 on allegations of leaking information to the media. Maoka was transferred at the same time as Antonett Mphago (to Gauteng) and Moses Dlamini (to KwaZulu-Natal). He was never charged with leaking information but was charged with the cancellation of bookings and failure to inform his supervisor and failure to report sick leave to the supervisor. Maoka was re-instated by the Labour Court on 29 April 2016, returning to his office on 06 May 2016. He was suspended on 12 May 2016 for 'providing legal assistance to his colleagues and for failure to make financial disclosure'. **See Annexure A13.**

32. Moses Dlamini (“**Dlamini**”) is the National Spokesman who was suspended on 20 June 2016. He made an affidavit in my Constitutional Court case. Dlamini was precautionary transferred to KwaZulu-Natal on 1 September 2015 on allegations of leaking information to the media. Dlamini was transferred at the same time as Antonette Mphago (to Gauteng) and Viceroy Maoka (to Limpopo). He was never charged with leaking information but was charged with the cancellation of bookings and failure to report sick leave to the supervisor timeously. Dlamini was re-instated by the Labour Court on 29 April 2016, returning to his office on 06 May 2016. He was suspended on 20 June 2016 for speaking to suspended officials (Maoka and McBride) against the directive of Kgamanyane, as well as allegations of sending disparaging emails about officials to IPID staff. Kgamanyane had issued a directive that IPID staff should not communicate with transferred and suspended officials. Dlamini was served with a letter of intent to permanently transfer him to Eastern Cape within 3 days of returning to the office. After objecting, he was transferred to the post of Director: Investigations at National Office effective 1 July 2016 as part of the “restructuring” After he objected to the transfer, he was suspended. **See Annexure A13.**
33. Dlamini's disciplinary hearing was presided over by the Limpopo Director of Public Prosecutions, Advocate Ivy Thenga (“**Thenga**”) to whom IPID makes referrals of cases investigated by it – a clear conflict of interest. Thenga said that she had been instructed to finalise the hearing over the weekend. Dlamini was reinstated upon my return to office.

34. Antonett Mphago (“Mphago”) is the Director: Executive Support in the office of the Executive Director. She was precautionary transferred to Gauteng on allegations of leaking information to the media. The said information related to the appointment of the daughter of the Deputy Minister of Police's daughter to a post of Deputy Director: Investigations in the Free State. She was transferred to Gauteng provincial office to the position of Deputy Director: Corporate Services position pending finalisation of investigations. She was never charged with leaking of information nor notified of the outcome of the investigation. On 1 December 2015, Mphago's transfer was uplifted after she had written to Kgamanyane informing him that 60 days had elapsed since her transfer and that no charges had been brought against her. She was denied access to her office and had to squat in the passage. On 30 June 2016 she was transferred to a position of Director: Compliance Monitoring, as a result of 'restructuring'. Mphago was under investigation on allegations of meeting/talking to with me on my visit to the national office on 9 June 2016. **See Annexure A13.**

## **Restructuring**

35. It is clear that Kgamanyane subscribed to the view that “If it works – break it!”, as there is no other way to comprehend the rationale behind the restructuring that went on during his tenure. He was like a mad scientist, transferring people to positions for which that had no competencies or experience. Some people even had to seek medical attention as a result of the senseless restructuring.
36. Vinesh Boodhoo (**“Boodhoo”**) was the Director: Investigation in Gauteng. He was

appointed by Ntshangase with two other people, who were forced out of IPID due to their association with Ms Ntshangase. Dan Morema (“Morema”) was appointed to act in Ntshangase's position, while she was on suspension. Morema victimised Boodhoo, as a result, he lodged a complaint against Morema. Boodhoo received correspondence informing him that the outcome of the investigation of his complaint was that he should be transferred out of Gauteng. Boodhoo was permanently transferred to the post of Director: Investigations in the Eastern Cape effective 1 July 2016 as a result of “restructuring”.

37. Marianne Moroasui (“**Moroasui**”) is the Chief Director: Legal Services. In March 2016 Kgamanyane had the Provincial Head of Kimberly and the then Deputy Provincial Head of the Western Cape take over the running of Legal Services whilst she was in the office. During the purported restructuring of the IPID, she was informed that she would be transferred to a position of Provincial Head in either Mpumalanga or Kimberley. She resisted the move and referred the matter to the PSA. Whilst still in consultation with the Kgamanyane, he made the decision to finally transfer her to Kimberley as Provincial Head. She was instructed to commence in Kimberley on 1 July 2016. She did not comply with the instruction and continued reporting to the National Office and one day she went out to lunch and upon her return her “biometric access” was deactivated and she could not access the National Office. Moroasui was informed by Matsomela, who was at the time acting as the head of Corporate Services that she had to report to Kimberly. Her Colleagues had to bring her handbag,

work bag and other personal belongings to her on the street as she was refused access, even to the National Office parking.

38. Zuziwe Cele (**“Cele”**) is the Deputy Director: Supply Chain Management. She was permanently transferred to Deputy Director: Corporate Services in Gauteng Province effective 1 August 2016 as a result of restructuring. She was seen to be a stumbling block to procurement.
39. Lindokuhle Ngcongco (**“Ngcongco”**) was the Chief Financial Officer (“CFO”) was transferred to Gauteng as the Provincial Head to head investigations. She was perceived to be a stumbling block to Kgamanyane’s plans for procurement. She was also opposed to the IPID paying for legal costs incurred by the Minister of Police (Nhleko). She has since left the IPID.
40. Mamodishe Molope (**“Molope”**) is the Chief Director: Compliance Monitoring and Compliance Management. She was transferred to Mpumalanga as Provincial Head to lead investigations, as part of restructuring.
41. Quite a number of other junior people were also transferred from their positions as a result of “restructuring” initiated by Kgamanyane with the approval of former Minister of Police, Nkosinathi Nhleko.

## **Return to office**

42. I returned to office on 19 October 2016 and requested Kgamanyane for a handover report. He was quite petulant and refused to give me such a report. He never returned to work and was irregularly transferred by Nhleko to the DPCI. He was accepted by former Hawks Head, Mthandazo Ntlemeza and appointed to the DPCI structure in the Free State. I had no say in Kgamanyane's transfer, which was done by Nhleko and Ntlemeza without any consultation. There is no greater example of interference in the operations of the IPID by a minister who had been found to have acted unlawfully and unconstitutionally by the Constitutional Court. To make matters worse, Kgamanyane was facing disciplinary action for the havoc he had caused at IPID. I wrote to Ntlemeza about my concerns. See **Annexure A14**.

43. Nhleko had awarded Kgamanyane a performance bonus which was clearly a gratification. He was the only one in IPID to be awarded a performance bonus.

## **Infiltration of IPID by Crime Intelligence**

44. I also found that IPID had been infiltrated by Crime Intelligence in the form of Tlou Kgomo ("Kgomo") and Emily Motsugi ("**Motsugi**"). Kgomo had been appointed as Director: Investigations. He was appointed to act as head of investigations in Sesoko's position. The two beat a hasty retreat back to Crime Intelligence soon after my return to office. My



next encounter with Kgomo was in Parliament where he was part of Phahlane's team to counter IPID's investigations. Kgomo would later approach IPID investigators, Mandla Mahlangu (**"Mahlangu"**) and Cedrick Nkabinde (**"Nkabinde"**), to offer them Brigadier positions to induce them to make false statements to implicate IPID managers in wrongdoing. In a recording made by one of the investigators, Kgomo can be heard making such an offer to Mahlangu. He confirms to Mahlangu that he is working with the North West team led by Major General Jan Mabula (**"Mabula"**) investigating a concocted case that would bring me "down", along with other IPID investigators and torpedo the investigation against Phahlane. Kgomo also took Mahlangu to Potchefstroom to meet Mabula. **See Annexure A15 (there's also a recording).**

45. Upon my return from my suspension on 19 October 2016 I was alerted of irregularities on how investigations had been conducted during the time when I was on suspension. There were allegations that certain cases that were being investigated by the IPID had been pre-maturely closed without carrying out proper investigation processes as contained in the Standard Operating Procedures. This was done in certain instances to push the statistics and other acts that amounted to defeating the ends of justice. These cases were termed "special closures". This was intended to manipulate statistics to give an impression that performance had been better under Kgamanyane. I instructed our Integrity Strengthening Unit to investigate these allegations. The Auditor-General also flagged some of these cases. One employee has already been dismissed as a result of this investigation. Another senior employee, Dan Morema, resigned when he was approached to make a statement. **See Annexure A16.**

## **Investigation into Phahlane**

46. Soon after my arrival I received a complaint from Paul O'Sullivan ("**O'Sullivan**"). The complaint was about a case of corruption and money laundering that had been opened against the then Acting National Commissioner of Police, General Phahlane. This case was first reported to the IPID before my arrival.
47. O'Sullivan had brought the case to the attention of Mr Kgamanyane, the Acting Executive Director, in March 2016 while I was on suspension. The complaint brought by O'Sullivan was that the case had not been investigated and he requested me to intervene and ensure that matter was investigated. One of the strange things that I found upon my return was that two cases had been opened, one as a duplicate of the other and vice versa – and both were then closed as duplicates of each other.
48. At the end of November 2016, a Task Team was formed that was to investigate the cases of corruption and money laundering that were levelled against General Phahlane. The Task Team comprised of Mandla Mahlangu, Temane Binang, Mantsha Raphesu and Cedrick Nkabinde.
49. The case to be investigated had to do with the construction of Phahlane's house at Sable Hills Estate allegedly with funds that were provided by a service provider to the SAPS. There was also the case of a music system worth R80 000 that was alleged to have been paid from the account of a service provider to the SAPS. Further there was a case of

vehicles in Phahlane's possession that, according to him, were either purchased and owned by him or sponsored for his use. The IPID investigated all cases and there was clear evidence of a corrupt relationship between Phahlane and service providers to the SAPS.

50. During January 2017 a search warrant was executed at the Sable Hills home of Phahlane. The purpose of the search was to identify the music system that was bought and paid for by a SAPS service provider. Present at the search was the person who had installed the music system, this was for purposes of identifying that the music system in Phahlane's house was the same music system that had been purchased by funds from a SAPS service provider and that he had installed in Phahlane's house.

51. After the search warrant was executed at Phahlane's house, he initiated a civil suit challenging the lawfulness of the search warrant.

52. The parties have exchanged papers in this matter and it was dormant since the latter part of 2017. Recently one of the original Task Team members, Cedrick Nkabinde, who was approached by Kgomo as mentioned in preceding paragraphs, deposed a supporting affidavit for Phahlane whilst he was undergoing a disciplinary process for several acts of misconduct. Nkabinde resigned with immediate effect on 19 October 2018, and his disciplinary hearing did not proceed.

### 53. Counter-investigation

54. I want to pause here and go back to when the initial investigation into the case of corruption and money laundering were initiated against Phahlane. O'Sullivan was the complainant and also because of his background in the matter he accompanied IPID investigators to the Sable Hills Estate to point out several witnesses to the case that the IPID was investigating. On some of the occasions he accompanied the IPID investigators together with his associate and attorney Sarah-Jane Trent.

55. As a result of the on-going investigations by the IPID with the assistance of O'Sullivan and Trent, Phahlane used his powers as the Acting National Commissioner to set up a team from the North West (Mabula Team) to start a counter-investigation on the IPID investigation against himself.

56. This SAPS counter-investigation was authorised under the guise of a security breach against the Acting National Commissioner. The North West Provincial Commissioner together with the Mabula Team concocted a report that was utilised to authorise their travel to Gauteng to investigate the purported security breach. Crime Intelligence ("CI") had earlier done an investigation of the alleged security breach and it found that there was in fact no security breach. The officers who did the investigation made statements to this effect. As a result of the concocted report, General Makhele was charged with defeating the ends of justice. This case is still with the NPA.

57. The Mabula Team then proceeded to counter the investigation of the IPID by approaching all the witnesses in the IPID investigation to get them to change their initial version against Phahlane and the SAPS service providers and their involvement in the construction of Phahlane's house and the cars.
58. Their counter-investigation resulted in a case being opened, Kameelfdrift 12/01/2017, against O'Sullivan and his associate Trent. The charges against them were, amongst others of impersonating IPID officials in terms of section 33(5) of the IPID Act, these were clearly trumped up charges. The charges were that they had visited Phahlane's Sable Hills home together with IPID investigators and that during the said visit they had impersonated IPID investigators.
59. During Trent's arrest her mobile phone was unlawfully confiscated and booked in for investigation in order to try and support the charges that were being fabricated against the pair and later on the IPID investigators that were added.
60. O'Sullivan and Trent made a number of appearances in the Pretoria Magistrate Court, in the case emanating from the Kameelfdrift case and around May 2017. Brigadier Ncube, one of the members of the Mabula Team made contact with two of the IPID investigators. He informed them that he was the investigator in the Kameelfdrift 12/01/2017 case and that he intended on adding them as co-accused in the case already before the Pretoria Magistrate Court.

61. Trent's phone was stolen by the Mabula Team and taken to Israel to be downloaded. The contents were leaked to the Sunday Times in a bid to falsely implicate myself and my investigators in wrongdoing to protect Phahlane.

62. There was a litany of charges that were brought against Mahlangu and Binang who were members of the IPID Task Team, at the top of the list were charges of contravening section 33(5) and section 33(2) of the IPID Act. The two investigators were added in State versus Sarah-Jane Trent and three others, which was held the Pretoria Magistrate Court. When Ncube had earlier come to IPID to obtain the statements of Mahlangu and Binang, I asked him why he was in Gauteng as he was based in the North West, he opened a case of intimidation against me.

63. The State Advocate in the matter was a Molatlhwa Mashuga ("**Mashuga**"), who also has some links to the NW SAPS team. The case was remanded on numerous times at the behest of the State, apparently for further investigations. After the numerous postponements for further investigations by Mashuga, the defence in October 2017, i.e IPID made an application that the matter be struck off the roll in terms of section 342A(3)(c) of the Criminal Procedure Act, No 51 of 1977, which deals with unreasonable delays in a matter before a court "

*"(3) If the court finds that the completion of the proceedings is being delayed unreasonably, the court may issue any such order as it deems fit in order to*

*eliminate the delay and any prejudice arising from it or to prevent further delay or prejudice, including an order-*

(a) ...;

(b) ...;

(c) *where the accused has not yet pleaded to the charge, that the case be struck off the roll and the prosecution not be resumed or instituted de novo without the written instruction of the attorney-general;”*

64. The Magistrate made an order that the matter be struck off the roll in terms of the above-mentioned section. The matter could only be re-enrolled with the written instruction of the NDPP, Shaun Abrahams at the time. This order by the Magistrate was made In October 2017.

65. It's important to indicate that neither the order by the Magistrate made in terms of section 342A(3)(c) of the Criminal Procedure Act nor the Prinsloo J Order, made in November 2017, stopped the Mabula Team from continuing with their counter investigation. This was clear when immediately after both orders Ncube took another warning statement, this time against Mantsha Raphesu and threatened to arrest the other members of the Task Team including myself, but despite all the threats the fabricated case is yet to be re-enrolled, further proving that the charges are baseless and are trumped up.

## **Interdict and main application wrt the counter-investigation (Court order in favour of the IPID)**

66. With the on-going counter-investigation by the Mabula Team, it was clear that the intention was to scupper the IPID investigation and the IPID brought an urgent application before the North Gauteng High Court in order to stop the counter-investigation and also to seek a declaratory that members of the SAPS that were themselves subjects of an investigation by the IPID should not investigate or oversee an investigation against members of the IPID.

67. An urgent interdict was sought against the Phahlane, at the time, the North West Provincial Commissioner, Mabula and Ncube. Later, in the main application, the other members of the Mabula Team were added as respondents as they were conducting this counter-investigation against members of the IPID.

68. Throughout the exchange of papers in this matter, the Mabula Team insisted that the cases that the IPID stated they were investigating against them were “cold cases”. This was proven to be false as a list was annexed in the papers to show the status of the cases against the members of the Mabula Team. It is, in any event, disingenuous for Mabula to say as the evidence shows that the only reason the cases had not progressed was due to them being suppressed. There is a **recording** in which one of the suspects admits to torturing the deceased in the Makau case and he implicates Mabula. See **Recording 3**



69. An agreement was reached by the parties and it was made the order of the court by Prinsloo J. At the time the order was made, Phahlane had been suspended as the Acting National Commissioner and General Mothiba had been appointed to act. Prior to the Prinsloo J order that was made on 28 November 2017, Mothiba had also been engaged on countless occasions to try and resolve the matter outside of the courts.

70. Prior the making of the Prinsloo J order, there had been countless engagements with the different senior management within SAPS in a bid to avoid litigation and come to an amicable solution to the number of civil suits that were in the courts. The Portfolio Committee on Police also tried to intervene by requesting an appearance and briefing by Phahlane, whilst he was still acting National Commissioner, and his team and the Executive Director and his team in order to try and resolve the battle that was playing out between the two departments.

71. All of the engagements and attempts to amicably resolve the impasse between the two sister departments did not assist and this culminated in the Prinsloo J interim order that was agreed upon by the parties. It was further agreed that the main application where a declaratory was sought would be heard at a later stage and would ensure that the issue of the counter-investigation would be finalised.

72. Despite the order that was made, the IPID became aware after the Mabula Team were continuing with the counter-investigation against the IPID, in the form of the investigators and myself.

73. As a result the IPID continued to engage the SAPS, the ministry as well as the office of the NDPP, in trying to ascertain whether the continuing investigation was sanctioned at a senior level.

74. There were also meetings held with General Sitole and Minister Cele, after their appointments to their respective offices, in order to bring them up to speed with these matters and also with a hope that the Minister would intervene.

75. Despite all the above efforts on the part of the IPID, as can be seen from the numerous letters to the various stakeholders, the National Commissioner only indicated that he would abide by the order of the court. The Minister on the other hand was unrepresented when the matter was argued for a final order on 21 June 2018. **See Annexure L.**

76. The matter was set down for argument before Judge Tuchten on 21 and 22 June 2018. , From the outset Phahlane agreed that he would agree to not take part or to oversee any investigation that was carried out by the members of the Mabula Team and that was also made part of the Tuchten Order that was made on 26 June 2018.

77. An important point to note is that, the National Commissioner of the SAPS, Sitole prior to the proceedings had entered a notice to abide by the order of the court and this was done in his official capacity.

78. The interpretation of this notice to abide coming from the National Commissioner's office led to the question that if the Commissioner abides by the prayers of the IPID, what locus standi did the members of the Mabula Team have to continue with an investigation that did not seem to be sanctioned by the Head of the SAPS?

79. There were arguments for both sides and at the last minute the Deputy National Commissioner, General Mfazi, gave a written undertaking that the members of the Mabula Team would no longer be involved in any "revenge-investigations" against members of the IPID that were investigating them.

80. The term "revenge-investigation" was made by Judge Tuchten in his judgment on 26 June 2018. The order was in effect drafted around section 25 of the IPID Act, which speaks to instances where an investigator has a conflict of interest in any investigation that he carries out that he would have to declare such interest. The SAPS Act does not have a similar clause that dealt with conflicts of interest. The Judge in this matter added that such members of the SAPS should also be precluded from overseeing such investigation.

81. Further the above gap in the SAPS legislation would be temporarily resolved by the Tuchten Judgment until such a time that there were appropriate regulations or standing orders or national legislation dealing with this gap.

### **Court order regarding search and seizure by Phahlane on vehicle investigation**

82. During the investigation into the Phahlane vehicle case, which he claimed he owned and others were sponsored, the IPID learnt that there were several SAPS service providers that Phahlane was conducting acts of criminality with. Amongst the service providers were Durandt Snyman, Keith Keating, the proprietor of FDA and others. The relationship between these parties was unravelled and IPID together with members of the DPCI conducted search warrants on the properties of the above-mentioned service providers on 4 December 2017. **See Annexure A17.**

83. The lawfulness of the search warrants was challenged. The applicants raised technical challenges against the affidavit utilised to authorise the search warrant by the magistrate, also that the IPID officials are not police officials and therefore cannot execute a search warrant in terms of the Criminal Procedure Act and other technicalities.

84. The matter was set down and heard on 18 June 2018 and the judgement was delivered on 3 August 2018 by Judge Kollapen. This judgment dealt thoroughly with all the technical points raised by the applicants. **See Annexure N.**

85. The applicants later brought an application for leave to appeal and it was dismissed. We have been advised by IPID's attorneys that the applicants are petitioning the Supreme Court of Appeal.

## **NPA bias**

86. The NPA under the leadership of Advocate Shaun Abrahams (**“Abrahams”**), working with Advocates Sibongile Mzinyathi (**“Mzinyathi”**), George Baloyi (**“Baloyi”**), Sello Maema (**“Maema”**), Molatlhwa Mashuga (**“Mashuga”**), Raymond Mathenjwa (**“Mathenjwa”**) has lost all credibility. I am of the belief that these advocates are a core group that has been at the forefront of enabling the capture of the criminal justice cluster through the persecution of corruption fighters. They were also involved in the protection of criminal suspects by declining to prosecute suspects investigated by the IPID in cases where their subordinates who are experienced prosecutors had recommended prosecution based on abundant evidence but the advocates would override those decisions.

87. I wrote to Abrahams on numerous occasions requesting that he review Mzinyathi's and Baloyi's decisions to undermine the decisions of Senior Public Prosecutors. Abrahams simply agreed with Mzinyathi's and Baloyi's actions. **See Annexure A18.**

88. I expressed my concern that Advocate Sello Maema (**“Maema”**) had been allowed to prosecute us as in my view his actions to prosecute us without a shred of evidence involves dishonesty and a lack of integrity.

89. Mashuga was behind the prosecution of IPID investigators and O'Sullivan, against a court order, on fabricated charges to torpedo the IPID's investigation into Phahlane.

### **The role of Hogan Lovells**

90. Hogan Lovells allowed itself to be used to hollow out public institutions, especially the IPID and the DPCI. This firm was used to get rid of people in the IPID, the DPCI. Common figures in the tainted disciplinary processes with fabricated charges include Advocate William Mokhari (“**Mokhari**”) and Advocate Mxolisi Zondo (“**Zondo**”). In IPID, Sesoko was dismissed after submitting a sick note, without even being allowed to present his case by Zondo with Mokgatle and Mokhari presiding over a sham disciplinary hearing. A similar thing had happened to Sibiya at the DPCI. The same team, except for the presiding officer, were involved in Khuba’s disciplinary hearing – the result was that Khuba was dismissed for failing to implicate me in wrongdoing.

### **Crimes against the State (CATS) unit**

91. Myself, Sesoko and Khuba were investigated by the DPCI’s Crimes Against the State (Cats) unit for fraud and defeating the ends of justice. The charges were dropped as there was never any shred of evidence. This unit was used to pursue a political agenda and to target individuals within the criminal justice cluster who stood up against state capture. It is headed by Brigadier Nyameka Xaba who reported to Ntlemenza. The same unit investigated other fabricated cases against Minister Pravin Gordhan, the so-called Rogue Unit and seems to have taken instructions or worked with SARS Commissioner Tom Moyane (“**Moyane**”). This can be seen from the incident involving SARS Legal Advisor Vlok Symington, who was prevented from leaving a boardroom until he handed back a document on the instructions of Moyane.

### **Leon Mbangwa – Nhleko’s Chief of Staff**

92. Leon / Lionel Mbangwa was employed by Nhleko as his Chief of Staff. The problem with his appointment is that he is a convicted criminal and illegal immigrant with no South African Identity Book/Card. He was convicted and sentenced to four years imprisonment for using a fraudulent ID. His security screening was processed through the IPID by Kgamanyane to avoid detection were it to be done through the SSA. This begs the question: Why would government minister want an illegal immigrant as his Chief of Staff?

**See Annexure A19.**

### **Reference group**

93. In October 2014, the Minister of Police, Nkosinathi Nhleko established a reference group to “...deal with issues of human resources, suspensions... the state of crime intelligence, administrative queries and perception of SAPS.” At the time, the Minister said the ministry would use the work done by the reference group to “...turnaround the image of the police and build public confidence in the service.” Surprisingly the reference group was comprised of public officials such as Adv Raymond Mathenjwa (“**Mathenjwa**”) from the NPA. Mathenjwa would later aggressively demand the docket into the renditions investigation – which was clearly beyond the scope of the reference group announced by Nhleko. Further, this was an undesirable situation as Mathenjwa was a senior prosecutor who was involved in deciding other matters referred to the NPA by the IPID. At the time, the IPID had already referred the docket to the National Director of Public Prosecutions for a decision on prosecution. That neither Mathenjwa nor the minister saw the clear conflict of interest which could compromise the IPID’s independence suggests that there

was some ulterior purpose to the establishment of the reference group.

### **Portfolio Committee on Police**

94. During the period of my suspension, IPID staff who were under attack by Kgamanyane directed correspondence to the Portfolio Committee on Police (“PCP”) – no response was ever received. I also wrote to the chairperson of the same committee alerting him to what was going on. I never received a response from him. **See Annexure A20.**



## **ZONDO COMMISSION OF INQUIRY**

Version 7 – 11 February 2019

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### **STATEMENT TO ZONDO COMMISSION OF INQUIRY BY ROBERT JOHN McBRIDE**

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#### **Legislative mandate**

1. The Independent Police Investigative Directorate is an independent body established by the Independent Police Investigative Directorate Act No. 1 of 2011, whose objects are set out in Section 2 thereof which, *inter alia* provides that the Independent Police Investigative Directorate ("IPID") should give effect to the provisions of Section 206(6) of the Constitution of RSA i.e. to establish an independent police complaints body established by national legislation in order to investigate alleged misconduct of, or any offence committed by a member of the Police Services in any province as well as further to ensure independent oversight of the South African Police and Municipal Police Services. There are further objectives to the Act.
2. The independence and impartiality of the Directorate is entrenched in terms of Section 4 of the IPID Act, which specifically states that the Directorate i.e. IPID functions independently from the South African Police Service.
3. Section 7(4) of the IPID Act provides that:

*“The Executive Director must refer criminal offences revealed as a result of an investigation to the National Prosecuting Authority for criminal prosecution and notify the Minister of such referral.” See Annexure A1*

4. The regulations for the operation of IPID provide, *inter alia*, that an investigator of IPID, as part of his functions, after collecting all evidence, statements and technical expert reports, if applicable, must submit a report on the investigation of the offence to the Executive Director or the relevant Provincial Head, as the case may be, containing recommendations regarding further action, which may include disciplinary measures to be taken against a member of the South African Police Service or the Municipal Police Service or criminal prosecution of such member. **See Annexure A2.**
5. The Standard Operating Procedures of IPID effective as from the 1<sup>st</sup> April 2013 and in particular in Section 7.10 thereof provide a procedure for the completion and closing of files and dockets. **See Annexure A3.**

## **Appointment**

6. I was appointed the Executive Director of IPID on the 3<sup>rd</sup> March 2014, in terms of section 6 of the IPID Act. Upon my appointment, I asked to be briefed on all high profile cases. One of the cases I was briefed on was the so called “Rendition Case”. After the briefing it became clear to me that the investigation was not conducted independently and impartially in line with IPID Act. What followed is fully traversed in my founding affidavits and replying affidavits with annexures filed in the high court, labour court and the Constitutional court to challenge my unlawful suspension. See

attached affidavits marked **Annexures A4 to A6**. The Constitutional Court found the actions of the minister to be unlawful and unconstitutional and set them aside. **See Annexure A7.**

7. Before I was suspended, I had written to the Chairperson of the Portfolio Committee on Police, Mr Francois Beukman ("**Beukman**"), asking that I be allowed to clarify and account to the Portfolio Committee on media reports about "two contradicting reports". Mr Beukman rejected this offer, citing the sub-judice rule. This was a concern to me given the fact that the doctrine of separation of powers compels him to hold the Executive and IPID to account. It is noteworthy that some members of the Portfolio Committee on Police held a meeting with the then Minister of Police, Nkosinathi Nhleko ("**Nhleko**") where my removal from office and that of then DPCI Head, Anwa Dramat ("**Dramat**") were discussed. The next day, Nhleko, made a presentation to the same portfolio committee to start a process to remove Dramat. **See Annexure A8.**
8. I pause to reflect on the events that preceded the Werksmans report which was used by Nhleko to legitimise his unlawful actions and the complicity of Sandile July ("**July**"), who compiled the said report. After Nhleko appointed Werksmans to investigate the "two reports" which he falsely alleged he had been given by the IPID, several attempts were made by July to interview IPID National Head of Investigations, Matthews Sesoko ("**Sesoko**") and IPID Lead Investigator, Innocent Khuba ("**Khuba**"). Sesoko was contacted by July and Sesoko indicated his willingness to cooperate but asked that the request be sent via email and be directed to me – he also provided the

relevant email addresses. Interestingly, when the email was sent, Khuba's and Sesoko's email addresses were typed correctly but mine was not. The email meant for me was sent to [rmcbride@ipid.co.za](mailto:rmcbride@ipid.co.za) instead of [rmcbride@ipid.gov.za](mailto:rmcbride@ipid.gov.za). Sesoko picked up on what he thought had been an error and alerted Werksmans. The next time they sent the email to [rmcbrde@ipid.gov.za](mailto:rmcbrde@ipid.gov.za) (leaving out the "i" in mcbride). One is left with no other conclusion than that Werksmans was in cahoots with Nhleko to conduct a sham investigation that would enable Nhleko to get rid of myself and Dramat by hook or crook.

9. Furthermore, Khuba reported having received multiple calls from Nhleko's Personal Assistant, Amelia Monaheng asking him to meet with Nhleko, who was so desperate to get Khuba to falsely implicate me in wrongdoing that Nhleko himself called Khuba promising him that the Ministry would cover his travelling costs to Cape Town on a weekend so that I would not find out about it. These were the actions of a government minister who was willing to use any means, including lies and deceit to capture the criminal justice system. Nhleko would later go to Parliament to perpetuate the same lies with the collusion of some members of Parliament.

### **Werksmans report**

10. Mr Israel Kgamanyane ("Kgamanyane"), who was the IPID's Free State Provincial Head at the time, was appointed to act as Executive Director.
11. After his appointment, Kgamanyane instructed Sesoko and Khuba to attend

interviews at Werksmans. Thereafter the discredited Werksmans report was leaked to the Sunday Times (Stephan Hofstatter and Mzilikazi wa Afrika) and the Sunday Independent (Solly Maphumulo). The Sunday Times and Sunday Independent ran a series of false stories to prop up Nhleko's false narrative.

12. The Werksmans report was the sole evidence against me, Khuba and Sesoko. A critique of the dodgy Werksmans report was filed with my papers when I challenged my unlawful suspension in the High Court. **See Annexure A4 to A6.** It should be noted that the author of this dodgy report, Advocate Sandile July, was later quoted by Maema in court as having as threatened to challenge his subpoena in the High Court on the basis that his report was hearsay and he could not stand by it in a court of law. So this report, which cost the taxpayers over R1,3 million was used to get rid of me, Khuba and Sesoko, was not worth the paper it was written on. **See Annexure A9.**
13. Bizarrely, Nhleko later tried to get the IPID to pay R9 million in legal costs incurred by him in his unlawful and unconstitutional attempt to remove me as IPID Executive Director.
14. On 21 May 2015, Khuba and Sesoko were suspended by Kgamanyane on the instructions of the Minister for allegedly altering the IPID's Progress Report into the Rendition Investigation, dated 22 January 2015 ("**the first report**") with myself. However, it should be noted that I did not even know about the existence of the report

that was supposedly altered as it predated my appointment as IPID Executive Director.

15. During the eighteen (18) months of my suspension, I heard about Kgamanyane wreaking havoc in the IPID by initially suspending and transferring at least eight (8) senior managers for no other reason than that they worked with me or that they deposed affidavits about information which was within their knowledge as IPID employees.
16. At the time of my return to the IPID, on 19 October 2016, the Constitutional Court had confirmed the High Court decision to declare my suspension unlawful and set it aside, I became aware that more people had been displaced at IPID under the so-called “restructuring”.

### **Suspensions, transfers and dismissals**

17. I now deal with the suspensions and transfers that occurred immediately following my suspension.
18. Matthews Sesoko (“Sesoko”) was the Chief Director: Investigations and Information Management. He is the National Head of Investigations. He made an affidavit in my application to challenge the constitutionality of section 6(3) and 6(6). He was suspended on 21 May 2015. He was charged with altering the report into Zimbabwe renditions investigation. As soon as Kgamanyane was appointed as Acting Executive

Director, he asked for the Panday case which was under investigation by the IPID. To date, this case is not on the court roll. Kgamanyane also went to Limpopo and the North West and collected dockets in which former DPCI Head, Mthandazo Berning Ntlemeza and Major-General Jan Mabula were suspects.

19. Sesoko was subsequently unlawfully dismissed by Advocate Mxolisi Zondo (“**Zondo**”), who presided over General Sibiya’s disciplinary hearing, without having presented his case. He had requested a postponement owing to illness but Zondo rejected his medical certificate and dismissed him in absentia. In his written ruling, Zondo concedes that it would have been fair to hear Sesoko’s version of events but bizarrely dismisses him with immediate effect, without allowing him to state his defence, because the medical certificate submitted by Sesoko’s counsel was from a general practitioner and not from a specialist. Furthermore, Sesoko’s dismissal was on the basis of hearsay evidence of a single witness. **See Annexure A10.**
20. Sesoko was also criminally charged with Khuba and me for fraud and defeating the ends of justice. The criminal charges were withdrawn on 01 November 2016. Upon my return to office in 2016, a settlement was reached with Sesoko’s attorneys to reinstate him to his former position.
21. Upon my return to office, I discovered that there were allegations that of the manipulation of cases to artificially inflate the performance of the IPID in my absence. Kgamanyane even went to Parliament and reported that performance was much better in the absence of the suspended and transferred, however, this was a blatant lie which was told to make himself look good. Nhleko awarded him a bonus for good

performance.

22. Innocent Khuba ("Khuba") is the Provincial Head: Limpopo. Khuba was the lead investigator into allegations that some Zimbabweans were unlawfully handed over to Zimbabwean police, resulting in them being killed. He was suspended on 21 May 2015 on allegations of altering the investigation report into Zimbabwe 'renditions' with myself and Sesoko. During his suspension, he was told that he was suspended on the Minister's instructions. Khuba made an affidavit for my Constitutional Court case.
23. Prior to his dismissal, Khuba was approached by Werksmans, the Minister's PA and the Minister himself wanting to interview him and get him to implicate me. When he failed to implicate myself and Sesoko, disciplinary charges were brought against him. After six months of suspension, Khuba reached a plea bargain deal and was given a final written warning. Within a week, Khuba was summarily dismissed after he refused to falsely implicate me and Sesoko. Upon his refusal, he was dismissed with immediate effect.
24. Well before my appointment as IPID Executive Director, Ntlemeza himself had told Khuba while he was doing the rendition investigation that it was the only thing holding up his move to the DPCI after a 'hit on Dramat'. **See Annexure A11.**



25. After Khuba was dismissed, he was approached by officers from the Hawks and promised his job back if only he made a false statement saying I had forced him to change the rendition report. Khuba recorded this approach by a Colonel Mahlangu, who is heard imploring Khuba to make a false statement to empower Ntlemeza. In the recording, Colonel Mahlangu further says Khuba would be restored to his position if he made such a statement. **See Recording 1.**
26. Khuba has since been restored to his position through an order of the Labour Court. Furthermore, the criminal charges against Khuba, Sesoko and myself were withdrawn on 01 November 2016.
27. Felicia Ntshangase (“**Ntshangase**”) is the Gauteng Provincial Head who was suspended on 8 July 2015 by Kgamanyane. Five days after my suspension, Nhleko addressed IPID management and made disparaging remarks about the judiciary. Ntshangase made an affidavit regarding this. She was suspended on allegations of nepotism for recommending the appointments of 3 officials in her office. However, the decision to appoint said officials was made by Mr Kgamanyane. The Public Service Commission later cleared Ntshangase of wrongdoing and recommended action against Kgamanyane instead.
28. Nomkhosi Netsianda (“**Netsianda**”) is the head of corporate services. She was suspended on 19 August 2015 on allegations of leaking information to the media. The

leaked information concerned the appointment of the Deputy Minister's daughter to a Deputy Director: Investigation post in the Free State, where Kgamanyane was the Provincial Head. Ms Netsianda advised against the appointment of the Deputy Minister's daughter. The documentation and her written notes ended up in a City Press report. The Public Service Commission ("**PSC**") later found that the Deputy Minister's daughter did not have the experience required for the post. Netsianda was also charged for conducting herself in a disgraceful manner by raising her voice during the Audit Committee meeting, where the funding of the IPID's case challenging Nhleko's interference with the IPID's independence was discussed. The disciplinary case against Netsianda was driven by the chairperson of the Audit Committee. **See Annexure A12.**

29. Netsianda's position was advertised in May 2016 and Molefe Matsomela ("**Matsomela**") was subsequently appointed on a six-month contract. Matsomela's security screening was done before the post was advertised, clearly indicating that advertisement and interviews were just a formality – the post was earmarked for Matsomela. During his tenure, the so-called restructuring proceeded at full speed and some people were transferred to more than one position. Matsomela never came back to work upon my return to office and he resigned thereafter. Since Matsomela's appointment was irregular, the IPID has instituted a process to recover the fruitless expenditure relating thereto in the amount of R450 456.44.

30. The reputations of the affected officials were ruined. Kgamanayane even issued a directive for IPID staff not to talk to the suspended and transferred officials. Due to the fact that there were no grounds for the transfers, three officials, Antonett Mphago (“**Mphago**”), Viceroy Maoka (“**Maoka**”) and Moses Dlamini (“**Dlamini**”), lodged a dispute at the General Public Service Sectoral Bargaining Council (“**GPSSBC**”) for their unfair transfers and a case of unlawful transfer in the Labour Court. The three were transferred for 8 months at great cost to the IPID just to punish them for having worked with me. The total cost of the transfers is in excess of R1 million, including the arbitration award which they won at the GPSSBC.
31. Pule Hillary Viceroy Maoka (“**Maoka**”) is the Director: Litigation Services. He made an affidavit for my Constitutional Court case. Maoka lodged a complaint regarding the conduct of Adv. Baloyi of NPA in the rendition prosecution. Mr Maoka was precautionary transferred to Limpopo on 1 September 2015 on allegations of leaking information to the media. Maoka was transferred at the same time as Antonett Mphago (to Gauteng) and Moses Dlamini (to KwaZulu-Natal). He was never charged with leaking information but was charged with the cancellation of bookings and failure to inform his supervisor and failure to report sick leave to the supervisor. Maoka was re-instated by the Labour Court on 29 April 2016, returning to his office on 06 May 2016. He was suspended on 12 May 2016 for 'providing legal assistance to his colleagues and for failure to make financial disclosure'. **See Annexure A13.**

32. Moses Dlamini (“**Dlamini**”) is the National Spokesman who was suspended on 20 June 2016. He made an affidavit in my Constitutional Court case. Dlamini was precautionary transferred to KwaZulu-Natal on 1 September 2015 on allegations of leaking information to the media. Dlamini was transferred at the same time as Antonette Mphago (to Gauteng) and Viceroy Maoka (to Limpopo). He was never charged with leaking information but was charged with the cancellation of bookings and failure to report sick leave to the supervisor timeously. Dlamini was re-instated by the Labour Court on 29 April 2016, returning to his office on 06 May 2016. He was suspended on 20 June 2016 for speaking to suspended officials (Maoka and McBride) against the directive of Kgamanyane, as well as allegations of sending disparaging emails about officials to IPID staff. Kgamanyane had issued a directive that IPID staff should not communicate with transferred and suspended officials. Dlamini was served with a letter of intent to permanently transfer him to Eastern Cape within 3 days of returning to the office. After objecting, he was transferred to the post of Director: Investigations at National Office effective 1 July 2016 as part of the “restructuring” After he objected to the transfer, he was suspended. **See Annexure A13.**
33. Dlamini's disciplinary hearing was presided over by the Limpopo Director of Public Prosecutions, Advocate Ivy Thenga (“**Thenga**”) to whom IPID makes referrals of cases investigated by it – a clear conflict of interest. Thenga said that she had been instructed to finalise the hearing over the weekend. Dlamini was reinstated upon my return to office.

34. Antonett Mphago (“Mphago”) is the Director: Executive Support in the office of the Executive Director. She was precautionary transferred to Gauteng on allegations of leaking information to the media. The said information related to the appointment of the daughter of the Deputy Minister of Police's daughter to a post of Deputy Director: Investigations in the Free State. She was transferred to Gauteng provincial office to the position of Deputy Director: Corporate Services position pending finalisation of investigations. She was never charged with leaking of information nor notified of the outcome of the investigation. On 1 December 2015, Mphago's transfer was uplifted after she had written to Kgamanyane informing him that 60 days had elapsed since her transfer and that no charges had been brought against her. She was denied access to her office and had to squat in the passage. On 30 June 2016 she was transferred to a position of Director: Compliance Monitoring, as a result of 'restructuring'. Mphago was under investigation on allegations of meeting/talking to with me on my visit to the national office on 9 June 2016. **See Annexure A13.**

## **Restructuring**

35. It is clear that Kgamanyane subscribed to the view that “If it works – break it!”, as there is no other way to comprehend the rationale behind the restructuring that went on during his tenure. He was like a mad scientist, transferring people to positions for which that had no competencies or experience. Some people even had to seek medical attention as a result of the senseless restructuring.
36. Vinesh Boodhoo (**“Boodhoo”**) was the Director: Investigation in Gauteng. He was

appointed by Ntshangase with two other people, who were forced out of IPID due to their association with Ms Ntshangase. Dan Morema (“Morema”) was appointed to act in Ntshangase's position, while she was on suspension. Morema victimised Boodhoo, as a result, he lodged a complaint against Morema. Boodhoo received correspondence informing him that the outcome of the investigation of his complaint was that he should be transferred out of Gauteng. Boodhoo was permanently transferred to the post of Director: Investigations in the Eastern Cape effective 1 July 2016 as a result of “restructuring”.

37. Marianne Moroasui (**“Moroasui”**) is the Chief Director: Legal Services. In March 2016 Kgamanyane had the Provincial Head of Kimberly and the then Deputy Provincial Head of the Western Cape take over the running of Legal Services whilst she was in the office. During the purported restructuring of the IPID, she was informed that she would be transferred to a position of Provincial Head in either Mpumalanga or Kimberley. She resisted the move and referred the matter to the PSA. Whilst still in consultation with the Kgamanyane, he made the decision to finally transfer her to Kimberley as Provincial Head. She was instructed to commence in Kimberley on 1 July 2016. She did not comply with the instruction and continued reporting to the National Office and one day she went out to lunch and upon her return her “biometric access” was deactivated and she could not access the National Office. Moroasui was informed by Matsomela, who was at the time acting as the head of Corporate Services that she had to report to Kimberley. Her Colleagues had to bring her handbag,

work bag and other personal belongings to her on the street as she was refused access, even to the National Office parking.

38. Zuziwe Cele (**“Cele”**) is the Deputy Director: Supply Chain Management. She was permanently transferred to Deputy Director: Corporate Services in Gauteng Province effective 1 August 2016 as a result of restructuring. She was seen to be a stumbling block to procurement.
39. Lindokuhle Ngcongco (**“Ngcongco”**) was the Chief Financial Officer (“CFO”) was transferred to Gauteng as the Provincial Head to head investigations. She was perceived to be a stumbling block to Kgamanyane’s plans for procurement. She was also opposed to the IPID paying for legal costs incurred by the Minister of Police (Nhleko). She has since left the IPID.
40. Mamodishe Molope (**“Molope”**) is the Chief Director: Compliance Monitoring and Compliance Management. She was transferred to Mpumalanga as Provincial Head to lead investigations, as part of restructuring.
41. Quite a number of other junior people were also transferred from their positions as a result of “restructuring” initiated by Kgamanyane with the approval of former Minister of Police, Nkosinathi Nhleko.

## **Return to office**

42. I returned to office on 19 October 2016 and requested Kgamanyane for a handover report. He was quite petulant and refused to give me such a report. He never returned to work and was irregularly transferred by Nhleko to the DPCI. He was accepted by former Hawks Head, Mthandazo Ntlemeza and appointed to the DPCI structure in the Free State. I had no say in Kgamanyane's transfer, which was done by Nhleko and Ntlemeza without any consultation. There is no greater example of interference in the operations of the IPID by a minister who had been found to have acted unlawfully and unconstitutionally by the Constitutional Court. To make matters worse, Kgamanyane was facing disciplinary action for the havoc he had caused at IPID. I wrote to Ntlemeza about my concerns. See **Annexure A14**.

43. Nhleko had awarded Kgamanyane a performance bonus which was clearly a gratification. He was the only one in IPID to be awarded a performance bonus.

## **Infiltration of IPID by Crime Intelligence**

44. I also found that IPID had been infiltrated by Crime Intelligence in the form of Tlou Kgomo ("Kgomo") and Emily Motsugi ("**Motsugi**"). Kgomo had been appointed as Director: Investigations. He was appointed to act as head of investigations in Sesoko's position. The two beat a hasty retreat back to Crime Intelligence soon after my return to office. My



next encounter with Kgomo was in Parliament where he was part of Phahlane's team to counter IPID's investigations. Kgomo would later approach IPID investigators, Mandla Mahlangu (**"Mahlangu"**) and Cedrick Nkabinde (**"Nkabinde"**), to offer them Brigadier positions to induce them to make false statements to implicate IPID managers in wrongdoing. In a recording made by one of the investigators, Kgomo can be heard making such an offer to Mahlangu. He confirms to Mahlangu that he is working with the North West team led by Major General Jan Mabula (**"Mabula"**) investigating a concocted case that would bring me "down", along with other IPID investigators and torpedo the investigation against Phahlane. Kgomo also took Mahlangu to Potchefstroom to meet Mabula. **See Annexure A15 (there's also a recording).**

45. Upon my return from my suspension on 19 October 2016 I was alerted of irregularities on how investigations had been conducted during the time when I was on suspension. There were allegations that certain cases that were being investigated by the IPID had been pre-maturely closed without carrying out proper investigation processes as contained in the Standard Operating Procedures. This was done in certain instances to push the statistics and other acts that amounted to defeating the ends of justice. These cases were termed "special closures". This was intended to manipulate statistics to give an impression that performance had been better under Kgamanyane. I instructed our Integrity Strengthening Unit to investigate these allegations. The Auditor-General also flagged some of these cases. One employee has already been dismissed as a result of this investigation. Another senior employee, Dan Morema, resigned when he was approached to make a statement. **See Annexure A16.**

## **Investigation into Phahlane**

46. Soon after my arrival I received a complaint from Paul O'Sullivan ("**O'Sullivan**"). The complaint was about a case of corruption and money laundering that had been opened against the then Acting National Commissioner of Police, General Phahlane. This case was first reported to the IPID before my arrival.
47. O'Sullivan had brought the case to the attention of Mr Kgamanyane, the Acting Executive Director, in March 2016 while I was on suspension. The complaint brought by O'Sullivan was that the case had not been investigated and he requested me to intervene and ensure that matter was investigated. One of the strange things that I found upon my return was that two cases had been opened, one as a duplicate of the other and vice versa – and both were then closed as duplicates of each other.
48. At the end of November 2016, a Task Team was formed that was to investigate the cases of corruption and money laundering that were levelled against General Phahlane. The Task Team comprised of Mandla Mahlangu, Temane Binang, Mantsha Raphesu and Cedrick Nkabinde.
49. The case to be investigated had to do with the construction of Phahlane's house at Sable Hills Estate allegedly with funds that were provided by a service provider to the SAPS. There was also the case of a music system worth R80 000 that was alleged to have been paid from the account of a service provider to the SAPS. Further there was a case of

vehicles in Phahlane's possession that, according to him, were either purchased and owned by him or sponsored for his use. The IPID investigated all cases and there was clear evidence of a corrupt relationship between Phahlane and service providers to the SAPS.

50. During January 2017 a search warrant was executed at the Sable Hills home of Phahlane. The purpose of the search was to identify the music system that was bought and paid for by a SAPS service provider. Present at the search was the person who had installed the music system, this was for purposes of identifying that the music system in Phahlane's house was the same music system that had been purchased by funds from a SAPS service provider and that he had installed in Phahlane's house.

51. After the search warrant was executed at Phahlane's house, he initiated a civil suit challenging the lawfulness of the search warrant.

52. The parties have exchanged papers in this matter and it was dormant since the latter part of 2017. Recently one of the original Task Team members, Cedrick Nkabinde, who was approached by Kgomo as mentioned in preceding paragraphs, deposed a supporting affidavit for Phahlane whilst he was undergoing a disciplinary process for several acts of misconduct. Nkabinde resigned with immediate effect on 19 October 2018, and his disciplinary hearing did not proceed.

### 53. Counter-investigation

54. I want to pause here and go back to when the initial investigation into the case of corruption and money laundering were initiated against Phahlane. O'Sullivan was the complainant and also because of his background in the matter he accompanied IPID investigators to the Sable Hills Estate to point out several witnesses to the case that the IPID was investigating. On some of the occasions he accompanied the IPID investigators together with his associate and attorney Sarah-Jane Trent.

55. As a result of the on-going investigations by the IPID with the assistance of O'Sullivan and Trent, Phahlane used his powers as the Acting National Commissioner to set up a team from the North West (Mabula Team) to start a counter-investigation on the IPID investigation against himself.

56. This SAPS counter-investigation was authorised under the guise of a security breach against the Acting National Commissioner. The North West Provincial Commissioner together with the Mabula Team concocted a report that was utilised to authorise their travel to Gauteng to investigate the purported security breach. Crime Intelligence ("CI") had earlier done an investigation of the alleged security breach and it found that there was in fact no security breach. The officers who did the investigation made statements to this effect. As a result of the concocted report, General Makhele was charged with defeating the ends of justice. This case is still with the NPA.

57. The Mabula Team then proceeded to counter the investigation of the IPID by approaching all the witnesses in the IPID investigation to get them to change their initial version against Phahlane and the SAPS service providers and their involvement in the construction of Phahlane's house and the cars.
58. Their counter-investigation resulted in a case being opened, Kameelfdrift 12/01/2017, against O'Sullivan and his associate Trent. The charges against them were, amongst others of impersonating IPID officials in terms of section 33(5) of the IPID Act, these were clearly trumped up charges. The charges were that they had visited Phahlane's Sable Hills home together with IPID investigators and that during the said visit they had impersonated IPID investigators.
59. During Trent's arrest her mobile phone was unlawfully confiscated and booked in for investigation in order to try and support the charges that were being fabricated against the pair and later on the IPID investigators that were added.
60. O'Sullivan and Trent made a number of appearances in the Pretoria Magistrate Court, in the case emanating from the Kameelfdrift case and around May 2017. Brigadier Ncube, one of the members of the Mabula Team made contact with two of the IPID investigators. He informed them that he was the investigator in the Kameelfdrift 12/01/2017 case and that he intended on adding them as co-accused in the case already before the Pretoria Magistrate Court.

61. Trent's phone was stolen by the Mabula Team and taken to Israel to be downloaded. The contents were leaked to the Sunday Times in a bid to falsely implicate myself and my investigators in wrongdoing to protect Phahlane.

62. There was a litany of charges that were brought against Mahlangu and Binang who were members of the IPID Task Team, at the top of the list were charges of contravening section 33(5) and section 33(2) of the IPID Act. The two investigators were added in State versus Sarah-Jane Trent and three others, which was held the Pretoria Magistrate Court. When Ncube had earlier come to IPID to obtain the statements of Mahlangu and Binang, I asked him why he was in Gauteng as he was based in the North West, he opened a case of intimidation against me.

63. The State Advocate in the matter was a Molatlhwa Mashuga ("**Mashuga**"), who also has some links to the NW SAPS team. The case was remanded on numerous times at the behest of the State, apparently for further investigations. After the numerous postponements for further investigations by Mashuga, the defence in October 2017, i.e IPID made an application that the matter be struck off the roll in terms of section 342A(3)(c) of the Criminal Procedure Act, No 51 of 1977, which deals with unreasonable delays in a matter before a court "

*"(3) If the court finds that the completion of the proceedings is being delayed unreasonably, the court may issue any such order as it deems fit in order to*

*eliminate the delay and any prejudice arising from it or to prevent further delay or prejudice, including an order-*

(a) ...;

(b) ...;

(c) *where the accused has not yet pleaded to the charge, that the case be struck off the roll and the prosecution not be resumed or instituted de novo without the written instruction of the attorney-general;”*

64. The Magistrate made an order that the matter be struck off the roll in terms of the above-mentioned section. The matter could only be re-enrolled with the written instruction of the NDPP, Shaun Abrahams at the time. This order by the Magistrate was made In October 2017.

65. It's important to indicate that neither the order by the Magistrate made in terms of section 342A(3)(c) of the Criminal Procedure Act nor the Prinsloo J Order, made in November 2017, stopped the Mabula Team from continuing with their counter investigation. This was clear when immediately after both orders Ncube took another warning statement, this time against Mantsha Raphesu and threatened to arrest the other members of the Task Team including myself, but despite all the threats the fabricated case is yet to be re-enrolled, further proving that the charges are baseless and are trumped up.

## **Interdict and main application wrt the counter-investigation (Court order in favour of the IPID)**

66. With the on-going counter-investigation by the Mabula Team, it was clear that the intention was to scupper the IPID investigation and the IPID brought an urgent application before the North Gauteng High Court in order to stop the counter-investigation and also to seek a declaratory that members of the SAPS that were themselves subjects of an investigation by the IPID should not investigate or oversee an investigation against members of the IPID.

67. An urgent interdict was sought against the Phahlane, at the time, the North West Provincial Commissioner, Mabula and Ncube. Later, in the main application, the other members of the Mabula Team were added as respondents as they were conducting this counter-investigation against members of the IPID.

68. Throughout the exchange of papers in this matter, the Mabula Team insisted that the cases that the IPID stated they were investigating against them were “cold cases”. This was proven to be false as a list was annexed in the papers to show the status of the cases against the members of the Mabula Team. It is, in any event, disingenuous for Mabula to say as the evidence shows that the only reason the cases had not progressed was due to them being suppressed. There is a **recording** in which one of the suspects admits to torturing the deceased in the Makau case and he implicates Mabula. See **Recording 3**



69. An agreement was reached by the parties and it was made the order of the court by Prinsloo J. At the time the order was made, Phahlane had been suspended as the Acting National Commissioner and General Mothiba had been appointed to act. Prior to the Prinsloo J order that was made on 28 November 2017, Mothiba had also been engaged on countless occasions to try and resolve the matter outside of the courts.

70. Prior the making of the Prinsloo J order, there had been countless engagements with the different senior management within SAPS in a bid to avoid litigation and come to an amicable solution to the number of civil suits that were in the courts. The Portfolio Committee on Police also tried to intervene by requesting an appearance and briefing by Phahlane, whilst he was still acting National Commissioner, and his team and the Executive Director and his team in order to try and resolve the battle that was playing out between the two departments.

71. All of the engagements and attempts to amicably resolve the impasse between the two sister departments did not assist and this culminated in the Prinsloo J interim order that was agreed upon by the parties. It was further agreed that the main application where a declaratory was sought would be heard at a later stage and would ensure that the issue of the counter-investigation would be finalised.

72. Despite the order that was made, the IPID became aware after the Mabula Team were continuing with the counter-investigation against the IPID, in the form of the investigators and myself.

73. As a result the IPID continued to engage the SAPS, the ministry as well as the office of the NDPP, in trying to ascertain whether the continuing investigation was sanctioned at a senior level.

74. There were also meetings held with General Sitole and Minister Cele, after their appointments to their respective offices, in order to bring them up to speed with these matters and also with a hope that the Minister would intervene.

75. Despite all the above efforts on the part of the IPID, as can be seen from the numerous letters to the various stakeholders, the National Commissioner only indicated that he would abide by the order of the court. The Minister on the other hand was unrepresented when the matter was argued for a final order on 21 June 2018. **See Annexure L.**

76. The matter was set down for argument before Judge Tuchten on 21 and 22 June 2018. , From the outset Phahlane agreed that he would agree to not take part or to oversee any investigation that was carried out by the members of the Mabula Team and that was also made part of the Tuchten Order that was made on 26 June 2018.

77. An important point to note is that, the National Commissioner of the SAPS, Sitole prior to the proceedings had entered a notice to abide by the order of the court and this was done in his official capacity.

78. The interpretation of this notice to abide coming from the National Commissioner's office led to the question that if the Commissioner abides by the prayers of the IPID, what locus standi did the members of the Mabula Team have to continue with an investigation that did not seem to be sanctioned by the Head of the SAPS?

79. There were arguments for both sides and at the last minute the Deputy National Commissioner, General Mfazi, gave a written undertaking that the members of the Mabula Team would no longer be involved in any "revenge-investigations" against members of the IPID that were investigating them.

80. The term "revenge-investigation" was made by Judge Tuchten in his judgment on 26 June 2018. The order was in effect drafted around section 25 of the IPID Act, which speaks to instances where an investigator has a conflict of interest in any investigation that he carries out that he would have to declare such interest. The SAPS Act does not have a similar clause that dealt with conflicts of interest. The Judge in this matter added that such members of the SAPS should also be precluded from overseeing such investigation.

81. Further the above gap in the SAPS legislation would be temporarily resolved by the Tuchten Judgment until such a time that there were appropriate regulations or standing orders or national legislation dealing with this gap.

### **Court order regarding search and seizure by Phahlane on vehicle investigation**

82. During the investigation into the Phahlane vehicle case, which he claimed he owned and others were sponsored, the IPID learnt that there were several SAPS service providers that Phahlane was conducting acts of criminality with. Amongst the service providers were Durandt Snyman, Keith Keating, the proprietor of FDA and others. The relationship between these parties was unravelled and IPID together with members of the DPCI conducted search warrants on the properties of the above-mentioned service providers on 4 December 2017. **See Annexure A17.**

83. The lawfulness of the search warrants was challenged. The applicants raised technical challenges against the affidavit utilised to authorise the search warrant by the magistrate, also that the IPID officials are not police officials and therefore cannot execute a search warrant in terms of the Criminal Procedure Act and other technicalities.

84. The matter was set down and heard on 18 June 2018 and the judgement was delivered on 3 August 2018 by Judge Kollapen. This judgment dealt thoroughly with all the technical points raised by the applicants. **See Annexure N.**

85. The applicants later brought an application for leave to appeal and it was dismissed. We have been advised by IPID's attorneys that the applicants are petitioning the Supreme Court of Appeal.

## **NPA bias**

86. The NPA under the leadership of Advocate Shaun Abrahams (**“Abrahams”**), working with Advocates Sibongile Mzinyathi (**“Mzinyathi”**), George Baloyi (**“Baloyi”**), Sello Maema (**“Maema”**), Molatlhwa Mashuga (**“Mashuga”**), Raymond Mathenjwa (**“Mathenjwa”**) has lost all credibility. I am of the belief that these advocates are a core group that has been at the forefront of enabling the capture of the criminal justice cluster through the persecution of corruption fighters. They were also involved in the protection of criminal suspects by declining to prosecute suspects investigated by the IPID in cases where their subordinates who are experienced prosecutors had recommended prosecution based on abundant evidence but the advocates would override those decisions.

87. I wrote to Abrahams on numerous occasions requesting that he review Mzinyathi's and Baloyi's decisions to undermine the decisions of Senior Public Prosecutors. Abrahams simply agreed with Mzinyathi's and Baloyi's actions. **See Annexure A18.**

88. I expressed my concern that Advocate Sello Maema (**“Maema”**) had been allowed to prosecute us as in my view his actions to prosecute us without a shred of evidence involves dishonesty and a lack of integrity.

89. Mashuga was behind the prosecution of IPID investigators and O'Sullivan, against a court order, on fabricated charges to torpedo the IPID's investigation into Phahlane.

## **The role of Hogan Lovells**

90. Hogan Lovells allowed itself to be used to hollow out public institutions, especially the IPID and the DPCI. This firm was used to get rid of people in the IPID, the DPCI. Common figures in the tainted disciplinary processes with fabricated charges include Advocate William Mokhari (“**Mokhari**”) and Advocate Mxolisi Zondo (“**Zondo**”). In IPID, Sesoko was dismissed after submitting a sick note, without even being allowed to present his case by Zondo with Mokgatle and Mokhari presiding over a sham disciplinary hearing. A similar thing had happened to Sibiya at the DPCI. The same team, except for the presiding officer, were involved in Khuba’s disciplinary hearing – the result was that Khuba was dismissed for failing to implicate me in wrongdoing.

## **Crimes against the State (CATS) unit**

91. Myself, Sesoko and Khuba were investigated by the DPCI’s Crimes Against the State (Cats) unit for fraud and defeating the ends of justice. The charges were dropped as there was never any shred of evidence. This unit was used to pursue a political agenda and to target individuals within the criminal justice cluster who stood up against state capture. It is headed by Brigadier Nyameka Xaba who reported to Ntlemenza. The same unit investigated other fabricated cases against Minister Pravin Gordhan, the so-called Rogue Unit and seems to have taken instructions or worked with SARS Commissioner Tom Moyane (“**Moyane**”). This can be seen from the incident involving SARS Legal Advisor Vlok Symington, who was prevented from leaving a boardroom until he handed back a document on the instructions of Moyane.

### **Leon Mbangwa – Nhleko’s Chief of Staff**

92. Leon / Lionel Mbangwa was employed by Nhleko as his Chief of Staff. The problem with his appointment is that he is a convicted criminal and illegal immigrant with no South African Identity Book/Card. He was convicted and sentenced to four years imprisonment for using a fraudulent ID. His security screening was processed through the IPID by Kgamanyane to avoid detection were it to be done through the SSA. This begs the question: Why would government minister want an illegal immigrant as his Chief of Staff?

**See Annexure A19.**

### **Reference group**

93. In October 2014, the Minister of Police, Nkosinathi Nhleko established a reference group to “...deal with issues of human resources, suspensions... the state of crime intelligence, administrative queries and perception of SAPS.” At the time, the Minister said the ministry would use the work done by the reference group to “...turnaround the image of the police and build public confidence in the service.” Surprisingly the reference group was comprised of public officials such as Adv Raymond Mathenjwa (“**Mathenjwa**”) from the NPA. Mathenjwa would later aggressively demand the docket into the renditions investigation – which was clearly beyond the scope of the reference group announced by Nhleko. Further, this was an undesirable situation as Mathenjwa was a senior prosecutor who was involved in deciding other matters referred to the NPA by the IPID. At the time, the IPID had already referred the docket to the National Director of Public Prosecutions for a decision on prosecution. That neither Mathenjwa nor the minister saw the clear conflict of interest which could compromise the IPID’s independence suggests that there

was some ulterior purpose to the establishment of the reference group.

### **Portfolio Committee on Police**

94. During the period of my suspension, IPID staff who were under attack by Kgamanyane directed correspondence to the Portfolio Committee on Police (“PCP”) – no response was ever received. I also wrote to the chairperson of the same committee alerting him to what was going on. I never received a response from him. **See Annexure A20.**



## **ZONDO COMMISSION OF INQUIRY**

Version 7 – 11 February 2019

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### **STATEMENT TO ZONDO COMMISSION OF INQUIRY BY ROBERT JOHN McBRIDE**

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#### **Legislative mandate**

1. The Independent Police Investigative Directorate is an independent body established by the Independent Police Investigative Directorate Act No. 1 of 2011, whose objects are set out in Section 2 thereof which, *inter alia* provides that the Independent Police Investigative Directorate ("IPID") should give effect to the provisions of Section 206(6) of the Constitution of RSA i.e. to establish an independent police complaints body established by national legislation in order to investigate alleged misconduct of, or any offence committed by a member of the Police Services in any province as well as further to ensure independent oversight of the South African Police and Municipal Police Services. There are further objectives to the Act.
2. The independence and impartiality of the Directorate is entrenched in terms of Section 4 of the IPID Act, which specifically states that the Directorate i.e. IPID functions independently from the South African Police Service.
3. Section 7(4) of the IPID Act provides that:

*“The Executive Director must refer criminal offences revealed as a result of an investigation to the National Prosecuting Authority for criminal prosecution and notify the Minister of such referral.” See Annexure A1*

4. The regulations for the operation of IPID provide, *inter alia*, that an investigator of IPID, as part of his functions, after collecting all evidence, statements and technical expert reports, if applicable, must submit a report on the investigation of the offence to the Executive Director or the relevant Provincial Head, as the case may be, containing recommendations regarding further action, which may include disciplinary measures to be taken against a member of the South African Police Service or the Municipal Police Service or criminal prosecution of such member. **See Annexure A2.**
5. The Standard Operating Procedures of IPID effective as from the 1<sup>st</sup> April 2013 and in particular in Section 7.10 thereof provide a procedure for the completion and closing of files and dockets. **See Annexure A3.**

## **Appointment**

6. I was appointed the Executive Director of IPID on the 3<sup>rd</sup> March 2014, in terms of section 6 of the IPID Act. Upon my appointment, I asked to be briefed on all high profile cases. One of the cases I was briefed on was the so called “Rendition Case”. After the briefing it became clear to me that the investigation was not conducted independently and impartially in line with IPID Act. What followed is fully traversed in my founding affidavits and replying affidavits with annexures filed in the high court, labour court and the Constitutional court to challenge my unlawful suspension. See

attached affidavits marked **Annexures A4 to A6**. The Constitutional Court found the actions of the minister to be unlawful and unconstitutional and set them aside. **See Annexure A7.**

7. Before I was suspended, I had written to the Chairperson of the Portfolio Committee on Police, Mr Francois Beukman ("**Beukman**"), asking that I be allowed to clarify and account to the Portfolio Committee on media reports about "two contradicting reports". Mr Beukman rejected this offer, citing the sub-judice rule. This was a concern to me given the fact that the doctrine of separation of powers compels him to hold the Executive and IPID to account. It is noteworthy that some members of the Portfolio Committee on Police held a meeting with the then Minister of Police, Nkosinathi Nhleko ("**Nhleko**") where my removal from office and that of then DPCI Head, Anwa Dramat ("**Dramat**") were discussed. The next day, Nhleko, made a presentation to the same portfolio committee to start a process to remove Dramat. **See Annexure A8.**
8. I pause to reflect on the events that preceded the Werksmans report which was used by Nhleko to legitimise his unlawful actions and the complicity of Sandile July ("**July**"), who compiled the said report. After Nhleko appointed Werksmans to investigate the "two reports" which he falsely alleged he had been given by the IPID, several attempts were made by July to interview IPID National Head of Investigations, Matthews Sesoko ("**Sesoko**") and IPID Lead Investigator, Innocent Khuba ("**Khuba**"). Sesoko was contacted by July and Sesoko indicated his willingness to cooperate but asked that the request be sent via email and be directed to me – he also provided the

relevant email addresses. Interestingly, when the email was sent, Khuba's and Sesoko's email addresses were typed correctly but mine was not. The email meant for me was sent to [rmcbride@ipid.co.za](mailto:rmcbride@ipid.co.za) instead of [rmcbride@ipid.gov.za](mailto:rmcbride@ipid.gov.za). Sesoko picked up on what he thought had been an error and alerted Werksmans. The next time they sent the email to [rmcbrde@ipid.gov.za](mailto:rmcbrde@ipid.gov.za) (leaving out the "i" in mcbride). One is left with no other conclusion than that Werksmans was in cahoots with Nhleko to conduct a sham investigation that would enable Nhleko to get rid of myself and Dramat by hook or crook.

9. Furthermore, Khuba reported having received multiple calls from Nhleko's Personal Assistant, Amelia Monaheng asking him to meet with Nhleko, who was so desperate to get Khuba to falsely implicate me in wrongdoing that Nhleko himself called Khuba promising him that the Ministry would cover his travelling costs to Cape Town on a weekend so that I would not find out about it. These were the actions of a government minister who was willing to use any means, including lies and deceit to capture the criminal justice system. Nhleko would later go to Parliament to perpetuate the same lies with the collusion of some members of Parliament.

### **Werksmans report**

10. Mr Israel Kgamanyane ("Kgamanyane"), who was the IPID's Free State Provincial Head at the time, was appointed to act as Executive Director.
11. After his appointment, Kgamanyane instructed Sesoko and Khuba to attend

interviews at Werksmans. Thereafter the discredited Werksmans report was leaked to the Sunday Times (Stephan Hofstatter and Mzilikazi wa Afrika) and the Sunday Independent (Solly Maphumulo). The Sunday Times and Sunday Independent ran a series of false stories to prop up Nhleko's false narrative.

12. The Werksmans report was the sole evidence against me, Khuba and Sesoko. A critique of the dodgy Werksmans report was filed with my papers when I challenged my unlawful suspension in the High Court. **See Annexure A4 to A6.** It should be noted that the author of this dodgy report, Advocate Sandile July, was later quoted by Maema in court as having as threatened to challenge his subpoena in the High Court on the basis that his report was hearsay and he could not stand by it in a court of law. So this report, which cost the taxpayers over R1,3 million was used to get rid of me, Khuba and Sesoko, was not worth the paper it was written on. **See Annexure A9.**
13. Bizarrely, Nhleko later tried to get the IPID to pay R9 million in legal costs incurred by him in his unlawful and unconstitutional attempt to remove me as IPID Executive Director.
14. On 21 May 2015, Khuba and Sesoko were suspended by Kgamanyane on the instructions of the Minister for allegedly altering the IPID's Progress Report into the Rendition Investigation, dated 22 January 2015 ("**the first report**") with myself. However, it should be noted that I did not even know about the existence of the report

that was supposedly altered as it predated my appointment as IPID Executive Director.

15. During the eighteen (18) months of my suspension, I heard about Kgamanyane wreaking havoc in the IPID by initially suspending and transferring at least eight (8) senior managers for no other reason than that they worked with me or that they deposed affidavits about information which was within their knowledge as IPID employees.
16. At the time of my return to the IPID, on 19 October 2016, the Constitutional Court had confirmed the High Court decision to declare my suspension unlawful and set it aside, I became aware that more people had been displaced at IPID under the so-called “restructuring”.

### **Suspensions, transfers and dismissals**

17. I now deal with the suspensions and transfers that occurred immediately following my suspension.
18. Matthews Sesoko (“Sesoko”) was the Chief Director: Investigations and Information Management. He is the National Head of Investigations. He made an affidavit in my application to challenge the constitutionality of section 6(3) and 6(6). He was suspended on 21 May 2015. He was charged with altering the report into Zimbabwe renditions investigation. As soon as Kgamanyane was appointed as Acting Executive

Director, he asked for the Panday case which was under investigation by the IPID. To date, this case is not on the court roll. Kgamanyane also went to Limpopo and the North West and collected dockets in which former DPCI Head, Mthandazo Berning Ntlemeza and Major-General Jan Mabula were suspects.

19. Sesoko was subsequently unlawfully dismissed by Advocate Mxolisi Zondo (“**Zondo**”), who presided over General Sibiya’s disciplinary hearing, without having presented his case. He had requested a postponement owing to illness but Zondo rejected his medical certificate and dismissed him in absentia. In his written ruling, Zondo concedes that it would have been fair to hear Sesoko’s version of events but bizarrely dismisses him with immediate effect, without allowing him to state his defence, because the medical certificate submitted by Sesoko’s counsel was from a general practitioner and not from a specialist. Furthermore, Sesoko’s dismissal was on the basis of hearsay evidence of a single witness. **See Annexure A10.**
20. Sesoko was also criminally charged with Khuba and me for fraud and defeating the ends of justice. The criminal charges were withdrawn on 01 November 2016. Upon my return to office in 2016, a settlement was reached with Sesoko’s attorneys to reinstate him to his former position.
21. Upon my return to office, I discovered that there were allegations that of the manipulation of cases to artificially inflate the performance of the IPID in my absence. Kgamanyane even went to Parliament and reported that performance was much better in the absence of the suspended and transferred, however, this was a blatant lie which was told to make himself look good. Nhleko awarded him a bonus for good

performance.

22. Innocent Khuba (“Khuba”) is the Provincial Head: Limpopo. Khuba was the lead investigator into allegations that some Zimbabweans were unlawfully handed over to Zimbabwean police, resulting in them being killed. He was suspended on 21 May 2015 on allegations of altering the investigation report into Zimbabwe ‘renditions’ with myself and Sesoko. During his suspension, he was told that he was suspended on the Minister's instructions. Khuba made an affidavit for my Constitutional Court case.
23. Prior to his dismissal, Khuba was approached by Werksmans, the Minister's PA and the Minister himself wanting to interview him and get him to implicate me. When he failed to implicate myself and Sesoko, disciplinary charges were brought against him. After six months of suspension, Khuba reached a plea bargain deal and was given a final written warning. Within a week, Khuba was summarily dismissed after he refused to falsely implicate me and Sesoko. Upon his refusal, he was dismissed with immediate effect.
24. Well before my appointment as IPID Executive Director, Ntlemeza himself had told Khuba while he was doing the rendition investigation that it was the only thing holding up his move to the DPCI after a ‘hit on Dramat’. **See Annexure A11.**



25. After Khuba was dismissed, he was approached by officers from the Hawks and promised his job back if only he made a false statement saying I had forced him to change the rendition report. Khuba recorded this approach by a Colonel Mahlangu, who is heard imploring Khuba to make a false statement to empower Ntlemeza. In the recording, Colonel Mahlangu further says Khuba would be restored to his position if he made such a statement. **See Recording 1.**
26. Khuba has since been restored to his position through an order of the Labour Court. Furthermore, the criminal charges against Khuba, Sesoko and myself were withdrawn on 01 November 2016.
27. Felicia Ntshangase (“**Ntshangase**”) is the Gauteng Provincial Head who was suspended on 8 July 2015 by Kgamanyane. Five days after my suspension, Nhleko addressed IPID management and made disparaging remarks about the judiciary. Ntshangase made an affidavit regarding this. She was suspended on allegations of nepotism for recommending the appointments of 3 officials in her office. However, the decision to appoint said officials was made by Mr Kgamanyane. The Public Service Commission later cleared Ntshangase of wrongdoing and recommended action against Kgamanyane instead.
28. Nomkhosi Netsianda (“**Netsianda**”) is the head of corporate services. She was suspended on 19 August 2015 on allegations of leaking information to the media. The

leaked information concerned the appointment of the Deputy Minister's daughter to a Deputy Director: Investigation post in the Free State, where Kgamanyane was the Provincial Head. Ms Netsianda advised against the appointment of the Deputy Minister's daughter. The documentation and her written notes ended up in a City Press report. The Public Service Commission ("**PSC**") later found that the Deputy Minister's daughter did not have the experience required for the post. Netsianda was also charged for conducting herself in a disgraceful manner by raising her voice during the Audit Committee meeting, where the funding of the IPID's case challenging Nhleko's interference with the IPID's independence was discussed. The disciplinary case against Netsianda was driven by the chairperson of the Audit Committee. **See Annexure A12.**

29. Netsianda's position was advertised in May 2016 and Molefe Matsomela ("**Matsomela**") was subsequently appointed on a six-month contract. Matsomela's security screening was done before the post was advertised, clearly indicating that advertisement and interviews were just a formality – the post was earmarked for Matsomela. During his tenure, the so-called restructuring proceeded at full speed and some people were transferred to more than one position. Matsomela never came back to work upon my return to office and he resigned thereafter. Since Matsomela's appointment was irregular, the IPID has instituted a process to recover the fruitless expenditure relating thereto in the amount of R450 456.44.

30. The reputations of the affected officials were ruined. Kgamanayane even issued a directive for IPID staff not to talk to the suspended and transferred officials. Due to the fact that there were no grounds for the transfers, three officials, Antonett Mphago (“**Mphago**”), Viceroy Maoka (“**Maoka**”) and Moses Dlamini (“**Dlamini**”), lodged a dispute at the General Public Service Sectoral Bargaining Council (“**GPSSBC**”) for their unfair transfers and a case of unlawful transfer in the Labour Court. The three were transferred for 8 months at great cost to the IPID just to punish them for having worked with me. The total cost of the transfers is in excess of R1 million, including the arbitration award which they won at the GPSSBC.
31. Pule Hillary Viceroy Maoka (“**Maoka**”) is the Director: Litigation Services. He made an affidavit for my Constitutional Court case. Maoka lodged a complaint regarding the conduct of Adv. Baloyi of NPA in the rendition prosecution. Mr Maoka was precautionary transferred to Limpopo on 1 September 2015 on allegations of leaking information to the media. Maoka was transferred at the same time as Antonett Mphago (to Gauteng) and Moses Dlamini (to KwaZulu-Natal). He was never charged with leaking information but was charged with the cancellation of bookings and failure to inform his supervisor and failure to report sick leave to the supervisor. Maoka was re-instated by the Labour Court on 29 April 2016, returning to his office on 06 May 2016. He was suspended on 12 May 2016 for 'providing legal assistance to his colleagues and for failure to make financial disclosure'. **See Annexure A13.**

32. Moses Dlamini (“**Dlamini**”) is the National Spokesman who was suspended on 20 June 2016. He made an affidavit in my Constitutional Court case. Dlamini was precautionary transferred to KwaZulu-Natal on 1 September 2015 on allegations of leaking information to the media. Dlamini was transferred at the same time as Antonette Mphago (to Gauteng) and Viceroy Maoka (to Limpopo). He was never charged with leaking information but was charged with the cancellation of bookings and failure to report sick leave to the supervisor timeously. Dlamini was re-instated by the Labour Court on 29 April 2016, returning to his office on 06 May 2016. He was suspended on 20 June 2016 for speaking to suspended officials (Maoka and McBride) against the directive of Kgamanyane, as well as allegations of sending disparaging emails about officials to IPID staff. Kgamanyane had issued a directive that IPID staff should not communicate with transferred and suspended officials. Dlamini was served with a letter of intent to permanently transfer him to Eastern Cape within 3 days of returning to the office. After objecting, he was transferred to the post of Director: Investigations at National Office effective 1 July 2016 as part of the “restructuring” After he objected to the transfer, he was suspended. **See Annexure A13.**
33. Dlamini's disciplinary hearing was presided over by the Limpopo Director of Public Prosecutions, Advocate Ivy Thenga (“**Thenga**”) to whom IPID makes referrals of cases investigated by it – a clear conflict of interest. Thenga said that she had been instructed to finalise the hearing over the weekend. Dlamini was reinstated upon my return to office.

34. Antonett Mphago (“Mphago”) is the Director: Executive Support in the office of the Executive Director. She was precautionary transferred to Gauteng on allegations of leaking information to the media. The said information related to the appointment of the daughter of the Deputy Minister of Police's daughter to a post of Deputy Director: Investigations in the Free State. She was transferred to Gauteng provincial office to the position of Deputy Director: Corporate Services position pending finalisation of investigations. She was never charged with leaking of information nor notified of the outcome of the investigation. On 1 December 2015, Mphago's transfer was uplifted after she had written to Kgamanyane informing him that 60 days had elapsed since her transfer and that no charges had been brought against her. She was denied access to her office and had to squat in the passage. On 30 June 2016 she was transferred to a position of Director: Compliance Monitoring, as a result of 'restructuring'. Mphago was under investigation on allegations of meeting/talking to with me on my visit to the national office on 9 June 2016. **See Annexure A13.**

## **Restructuring**

35. It is clear that Kgamanyane subscribed to the view that “If it works – break it!”, as there is no other way to comprehend the rationale behind the restructuring that went on during his tenure. He was like a mad scientist, transferring people to positions for which that had no competencies or experience. Some people even had to seek medical attention as a result of the senseless restructuring.
36. Vinesh Boodhoo (**“Boodhoo”**) was the Director: Investigation in Gauteng. He was

appointed by Ntshangase with two other people, who were forced out of IPID due to their association with Ms Ntshangase. Dan Morema (“Morema”) was appointed to act in Ntshangase's position, while she was on suspension. Morema victimised Boodhoo, as a result, he lodged a complaint against Morema. Boodhoo received correspondence informing him that the outcome of the investigation of his complaint was that he should be transferred out of Gauteng. Boodhoo was permanently transferred to the post of Director: Investigations in the Eastern Cape effective 1 July 2016 as a result of “restructuring”.

37. Marianne Moroasui (**“Moroasui”**) is the Chief Director: Legal Services. In March 2016 Kgamanyane had the Provincial Head of Kimberly and the then Deputy Provincial Head of the Western Cape take over the running of Legal Services whilst she was in the office. During the purported restructuring of the IPID, she was informed that she would be transferred to a position of Provincial Head in either Mpumalanga or Kimberley. She resisted the move and referred the matter to the PSA. Whilst still in consultation with the Kgamanyane, he made the decision to finally transfer her to Kimberley as Provincial Head. She was instructed to commence in Kimberley on 1 July 2016. She did not comply with the instruction and continued reporting to the National Office and one day she went out to lunch and upon her return her “biometric access” was deactivated and she could not access the National Office. Moroasui was informed by Matsomela, who was at the time acting as the head of Corporate Services that she had to report to Kimberly. Her Colleagues had to bring her handbag,

work bag and other personal belongings to her on the street as she was refused access, even to the National Office parking.

38. Zuziwe Cele (**“Cele”**) is the Deputy Director: Supply Chain Management. She was permanently transferred to Deputy Director: Corporate Services in Gauteng Province effective 1 August 2016 as a result of restructuring. She was seen to be a stumbling block to procurement.
39. Lindokuhle Ngcongco (**“Ngcongco”**) was the Chief Financial Officer (“CFO”) was transferred to Gauteng as the Provincial Head to head investigations. She was perceived to be a stumbling block to Kgamanyane’s plans for procurement. She was also opposed to the IPID paying for legal costs incurred by the Minister of Police (Nhleko). She has since left the IPID.
40. Mamodishe Molope (**“Molope”**) is the Chief Director: Compliance Monitoring and Compliance Management. She was transferred to Mpumalanga as Provincial Head to lead investigations, as part of restructuring.
41. Quite a number of other junior people were also transferred from their positions as a result of “restructuring” initiated by Kgamanyane with the approval of former Minister of Police, Nkosinathi Nhleko.

## **Return to office**

42. I returned to office on 19 October 2016 and requested Kgamanyane for a handover report. He was quite petulant and refused to give me such a report. He never returned to work and was irregularly transferred by Nhleko to the DPCI. He was accepted by former Hawks Head, Mthandazo Ntlemeza and appointed to the DPCI structure in the Free State. I had no say in Kgamanyane's transfer, which was done by Nhleko and Ntlemeza without any consultation. There is no greater example of interference in the operations of the IPID by a minister who had been found to have acted unlawfully and unconstitutionally by the Constitutional Court. To make matters worse, Kgamanyane was facing disciplinary action for the havoc he had caused at IPID. I wrote to Ntlemeza about my concerns. See **Annexure A14**.

43. Nhleko had awarded Kgamanyane a performance bonus which was clearly a gratification. He was the only one in IPID to be awarded a performance bonus.

## **Infiltration of IPID by Crime Intelligence**

44. I also found that IPID had been infiltrated by Crime Intelligence in the form of Tlou Kgomo ("Kgomo") and Emily Motsugi ("**Motsugi**"). Kgomo had been appointed as Director: Investigations. He was appointed to act as head of investigations in Sesoko's position. The two beat a hasty retreat back to Crime Intelligence soon after my return to office. My



next encounter with Kgomo was in Parliament where he was part of Phahlane's team to counter IPID's investigations. Kgomo would later approach IPID investigators, Mandla Mahlangu (**"Mahlangu"**) and Cedrick Nkabinde (**"Nkabinde"**), to offer them Brigadier positions to induce them to make false statements to implicate IPID managers in wrongdoing. In a recording made by one of the investigators, Kgomo can be heard making such an offer to Mahlangu. He confirms to Mahlangu that he is working with the North West team led by Major General Jan Mabula (**"Mabula"**) investigating a concocted case that would bring me "down", along with other IPID investigators and torpedo the investigation against Phahlane. Kgomo also took Mahlangu to Potchefstroom to meet Mabula. **See Annexure A15 (there's also a recording).**

45. Upon my return from my suspension on 19 October 2016 I was alerted of irregularities on how investigations had been conducted during the time when I was on suspension. There were allegations that certain cases that were being investigated by the IPID had been pre-maturely closed without carrying out proper investigation processes as contained in the Standard Operating Procedures. This was done in certain instances to push the statistics and other acts that amounted to defeating the ends of justice. These cases were termed "special closures". This was intended to manipulate statistics to give an impression that performance had been better under Kgamanyane. I instructed our Integrity Strengthening Unit to investigate these allegations. The Auditor-General also flagged some of these cases. One employee has already been dismissed as a result of this investigation. Another senior employee, Dan Morema, resigned when he was approached to make a statement. **See Annexure A16.**

## **Investigation into Phahlane**

46. Soon after my arrival I received a complaint from Paul O'Sullivan ("**O'Sullivan**"). The complaint was about a case of corruption and money laundering that had been opened against the then Acting National Commissioner of Police, General Phahlane. This case was first reported to the IPID before my arrival.
47. O'Sullivan had brought the case to the attention of Mr Kgamanyane, the Acting Executive Director, in March 2016 while I was on suspension. The complaint brought by O'Sullivan was that the case had not been investigated and he requested me to intervene and ensure that matter was investigated. One of the strange things that I found upon my return was that two cases had been opened, one as a duplicate of the other and vice versa – and both were then closed as duplicates of each other.
48. At the end of November 2016, a Task Team was formed that was to investigate the cases of corruption and money laundering that were levelled against General Phahlane. The Task Team comprised of Mandla Mahlangu, Temane Binang, Mantsha Raphesu and Cedrick Nkabinde.
49. The case to be investigated had to do with the construction of Phahlane's house at Sable Hills Estate allegedly with funds that were provided by a service provider to the SAPS. There was also the case of a music system worth R80 000 that was alleged to have been paid from the account of a service provider to the SAPS. Further there was a case of

vehicles in Phahlane's possession that, according to him, were either purchased and owned by him or sponsored for his use. The IPID investigated all cases and there was clear evidence of a corrupt relationship between Phahlane and service providers to the SAPS.

50. During January 2017 a search warrant was executed at the Sable Hills home of Phahlane. The purpose of the search was to identify the music system that was bought and paid for by a SAPS service provider. Present at the search was the person who had installed the music system, this was for purposes of identifying that the music system in Phahlane's house was the same music system that had been purchased by funds from a SAPS service provider and that he had installed in Phahlane's house.

51. After the search warrant was executed at Phahlane's house, he initiated a civil suit challenging the lawfulness of the search warrant.

52. The parties have exchanged papers in this matter and it was dormant since the latter part of 2017. Recently one of the original Task Team members, Cedrick Nkabinde, who was approached by Kgomo as mentioned in preceding paragraphs, deposed a supporting affidavit for Phahlane whilst he was undergoing a disciplinary process for several acts of misconduct. Nkabinde resigned with immediate effect on 19 October 2018, and his disciplinary hearing did not proceed.

### 53. Counter-investigation

54. I want to pause here and go back to when the initial investigation into the case of corruption and money laundering were initiated against Phahlane. O'Sullivan was the complainant and also because of his background in the matter he accompanied IPID investigators to the Sable Hills Estate to point out several witnesses to the case that the IPID was investigating. On some of the occasions he accompanied the IPID investigators together with his associate and attorney Sarah-Jane Trent.

55. As a result of the on-going investigations by the IPID with the assistance of O'Sullivan and Trent, Phahlane used his powers as the Acting National Commissioner to set up a team from the North West (Mabula Team) to start a counter-investigation on the IPID investigation against himself.

56. This SAPS counter-investigation was authorised under the guise of a security breach against the Acting National Commissioner. The North West Provincial Commissioner together with the Mabula Team concocted a report that was utilised to authorise their travel to Gauteng to investigate the purported security breach. Crime Intelligence ("CI") had earlier done an investigation of the alleged security breach and it found that there was in fact no security breach. The officers who did the investigation made statements to this effect. As a result of the concocted report, General Makhele was charged with defeating the ends of justice. This case is still with the NPA.

57. The Mabula Team then proceeded to counter the investigation of the IPID by approaching all the witnesses in the IPID investigation to get them to change their initial version against Phahlane and the SAPS service providers and their involvement in the construction of Phahlane's house and the cars.
58. Their counter-investigation resulted in a case being opened, Kameelfdrift 12/01/2017, against O'Sullivan and his associate Trent. The charges against them were, amongst others of impersonating IPID officials in terms of section 33(5) of the IPID Act, these were clearly trumped up charges. The charges were that they had visited Phahlane's Sable Hills home together with IPID investigators and that during the said visit they had impersonated IPID investigators.
59. During Trent's arrest her mobile phone was unlawfully confiscated and booked in for investigation in order to try and support the charges that were being fabricated against the pair and later on the IPID investigators that were added.
60. O'Sullivan and Trent made a number of appearances in the Pretoria Magistrate Court, in the case emanating from the Kameelfdrift case and around May 2017. Brigadier Ncube, one of the members of the Mabula Team made contact with two of the IPID investigators. He informed them that he was the investigator in the Kameelfdrift 12/01/2017 case and that he intended on adding them as co-accused in the case already before the Pretoria Magistrate Court.

61. Trent's phone was stolen by the Mabula Team and taken to Israel to be downloaded. The contents were leaked to the Sunday Times in a bid to falsely implicate myself and my investigators in wrongdoing to protect Phahlane.

62. There was a litany of charges that were brought against Mahlangu and Binang who were members of the IPID Task Team, at the top of the list were charges of contravening section 33(5) and section 33(2) of the IPID Act. The two investigators were added in State versus Sarah-Jane Trent and three others, which was held the Pretoria Magistrate Court. When Ncube had earlier come to IPID to obtain the statements of Mahlangu and Binang, I asked him why he was in Gauteng as he was based in the North West, he opened a case of intimidation against me.

63. The State Advocate in the matter was a Molatlhwa Mashuga ("**Mashuga**"), who also has some links to the NW SAPS team. The case was remanded on numerous times at the behest of the State, apparently for further investigations. After the numerous postponements for further investigations by Mashuga, the defence in October 2017, i.e IPID made an application that the matter be struck off the roll in terms of section 342A(3)(c) of the Criminal Procedure Act, No 51 of 1977, which deals with unreasonable delays in a matter before a court "

*"(3) If the court finds that the completion of the proceedings is being delayed unreasonably, the court may issue any such order as it deems fit in order to*

*eliminate the delay and any prejudice arising from it or to prevent further delay or prejudice, including an order-*

(a) ...;

(b) ...;

(c) *where the accused has not yet pleaded to the charge, that the case be struck off the roll and the prosecution not be resumed or instituted de novo without the written instruction of the attorney-general;”*

64. The Magistrate made an order that the matter be struck off the roll in terms of the above-mentioned section. The matter could only be re-enrolled with the written instruction of the NDPP, Shaun Abrahams at the time. This order by the Magistrate was made In October 2017.

65. It's important to indicate that neither the order by the Magistrate made in terms of section 342A(3)(c) of the Criminal Procedure Act nor the Prinsloo J Order, made in November 2017, stopped the Mabula Team from continuing with their counter investigation. This was clear when immediately after both orders Ncube took another warning statement, this time against Mantsha Raphesu and threatened to arrest the other members of the Task Team including myself, but despite all the threats the fabricated case is yet to be re-enrolled, further proving that the charges are baseless and are trumped up.

## **Interdict and main application wrt the counter-investigation (Court order in favour of the IPID)**

66. With the on-going counter-investigation by the Mabula Team, it was clear that the intention was to scupper the IPID investigation and the IPID brought an urgent application before the North Gauteng High Court in order to stop the counter-investigation and also to seek a declaratory that members of the SAPS that were themselves subjects of an investigation by the IPID should not investigate or oversee an investigation against members of the IPID.

67. An urgent interdict was sought against the Phahlane, at the time, the North West Provincial Commissioner, Mabula and Ncube. Later, in the main application, the other members of the Mabula Team were added as respondents as they were conducting this counter-investigation against members of the IPID.

68. Throughout the exchange of papers in this matter, the Mabula Team insisted that the cases that the IPID stated they were investigating against them were “cold cases”. This was proven to be false as a list was annexed in the papers to show the status of the cases against the members of the Mabula Team. It is, in any event, disingenuous for Mabula to say as the evidence shows that the only reason the cases had not progressed was due to them being suppressed. There is a **recording** in which one of the suspects admits to torturing the deceased in the Makau case and he implicates Mabula. See **Recording 3**



69. An agreement was reached by the parties and it was made the order of the court by Prinsloo J. At the time the order was made, Phahlane had been suspended as the Acting National Commissioner and General Mothiba had been appointed to act. Prior to the Prinsloo J order that was made on 28 November 2017, Mothiba had also been engaged on countless occasions to try and resolve the matter outside of the courts.

70. Prior the making of the Prinsloo J order, there had been countless engagements with the different senior management within SAPS in a bid to avoid litigation and come to an amicable solution to the number of civil suits that were in the courts. The Portfolio Committee on Police also tried to intervene by requesting an appearance and briefing by Phahlane, whilst he was still acting National Commissioner, and his team and the Executive Director and his team in order to try and resolve the battle that was playing out between the two departments.

71. All of the engagements and attempts to amicably resolve the impasse between the two sister departments did not assist and this culminated in the Prinsloo J interim order that was agreed upon by the parties. It was further agreed that the main application where a declaratory was sought would be heard at a later stage and would ensure that the issue of the counter-investigation would be finalised.

72. Despite the order that was made, the IPID became aware after the Mabula Team were continuing with the counter-investigation against the IPID, in the form of the investigators and myself.

73. As a result the IPID continued to engage the SAPS, the ministry as well as the office of the NDPP, in trying to ascertain whether the continuing investigation was sanctioned at a senior level.

74. There were also meetings held with General Sitole and Minister Cele, after their appointments to their respective offices, in order to bring them up to speed with these matters and also with a hope that the Minister would intervene.

75. Despite all the above efforts on the part of the IPID, as can be seen from the numerous letters to the various stakeholders, the National Commissioner only indicated that he would abide by the order of the court. The Minister on the other hand was unrepresented when the matter was argued for a final order on 21 June 2018. **See Annexure L.**

76. The matter was set down for argument before Judge Tuchten on 21 and 22 June 2018. , From the outset Phahlane agreed that he would agree to not take part or to oversee any investigation that was carried out by the members of the Mabula Team and that was also made part of the Tuchten Order that was made on 26 June 2018.

77. An important point to note is that, the National Commissioner of the SAPS, Sitole prior to the proceedings had entered a notice to abide by the order of the court and this was done in his official capacity.

78. The interpretation of this notice to abide coming from the National Commissioner's office led to the question that if the Commissioner abides by the prayers of the IPID, what locus standi did the members of the Mabula Team have to continue with an investigation that did not seem to be sanctioned by the Head of the SAPS?
79. There were arguments for both sides and at the last minute the Deputy National Commissioner, General Mfazi, gave a written undertaking that the members of the Mabula Team would no longer be involved in any "revenge-investigations" against members of the IPID that were investigating them.
80. The term "revenge-investigation" was made by Judge Tuchten in his judgment on 26 June 2018. The order was in effect drafted around section 25 of the IPID Act, which speaks to instances where an investigator has a conflict of interest in any investigation that he carries out that he would have to declare such interest. The SAPS Act does not have a similar clause that dealt with conflicts of interest. The Judge in this matter added that such members of the SAPS should also be precluded from overseeing such investigation.
81. Further the above gap in the SAPS legislation would be temporarily resolved by the Tuchten Judgment until such a time that there were appropriate regulations or standing orders or national legislation dealing with this gap.

### **Court order regarding search and seizure by Phahlane on vehicle investigation**

82. During the investigation into the Phahlane vehicle case, which he claimed he owned and others were sponsored, the IPID learnt that there were several SAPS service providers that Phahlane was conducting acts of criminality with. Amongst the service providers were Durandt Snyman, Keith Keating, the proprietor of FDA and others. The relationship between these parties was unravelled and IPID together with members of the DPCI conducted search warrants on the properties of the above-mentioned service providers on 4 December 2017. **See Annexure A17.**

83. The lawfulness of the search warrants was challenged. The applicants raised technical challenges against the affidavit utilised to authorise the search warrant by the magistrate, also that the IPID officials are not police officials and therefore cannot execute a search warrant in terms of the Criminal Procedure Act and other technicalities.

84. The matter was set down and heard on 18 June 2018 and the judgement was delivered on 3 August 2018 by Judge Kollapen. This judgment dealt thoroughly with all the technical points raised by the applicants. **See Annexure N.**

85. The applicants later brought an application for leave to appeal and it was dismissed. We have been advised by IPID's attorneys that the applicants are petitioning the Supreme Court of Appeal.

## **NPA bias**

86. The NPA under the leadership of Advocate Shaun Abrahams (**“Abrahams”**), working with Advocates Sibongile Mzinyathi (**“Mzinyathi”**), George Baloyi (**“Baloyi”**), Sello Maema (**“Maema”**), Molatlhwa Mashuga (**“Mashuga”**), Raymond Mathenjwa (**“Mathenjwa”**) has lost all credibility. I am of the belief that these advocates are a core group that has been at the forefront of enabling the capture of the criminal justice cluster through the persecution of corruption fighters. They were also involved in the protection of criminal suspects by declining to prosecute suspects investigated by the IPID in cases where their subordinates who are experienced prosecutors had recommended prosecution based on abundant evidence but the advocates would override those decisions.

87. I wrote to Abrahams on numerous occasions requesting that he review Mzinyathi's and Baloyi's decisions to undermine the decisions of Senior Public Prosecutors. Abrahams simply agreed with Mzinyathi's and Baloyi's actions. **See Annexure A18.**

88. I expressed my concern that Advocate Sello Maema (**“Maema”**) had been allowed to prosecute us as in my view his actions to prosecute us without a shred of evidence involves dishonesty and a lack of integrity.

89. Mashuga was behind the prosecution of IPID investigators and O'Sullivan, against a court order, on fabricated charges to torpedo the IPID's investigation into Phahlane.

## **The role of Hogan Lovells**

90. Hogan Lovells allowed itself to be used to hollow out public institutions, especially the IPID and the DPCI. This firm was used to get rid of people in the IPID, the DPCI. Common figures in the tainted disciplinary processes with fabricated charges include Advocate William Mokhari (“**Mokhari**”) and Advocate Mxolisi Zondo (“**Zondo**”). In IPID, Sesoko was dismissed after submitting a sick note, without even being allowed to present his case by Zondo with Mokgatle and Mokhari presiding over a sham disciplinary hearing. A similar thing had happened to Sibiya at the DPCI. The same team, except for the presiding officer, were involved in Khuba’s disciplinary hearing – the result was that Khuba was dismissed for failing to implicate me in wrongdoing.

## **Crimes against the State (CATS) unit**

91. Myself, Sesoko and Khuba were investigated by the DPCI’s Crimes Against the State (Cats) unit for fraud and defeating the ends of justice. The charges were dropped as there was never any shred of evidence. This unit was used to pursue a political agenda and to target individuals within the criminal justice cluster who stood up against state capture. It is headed by Brigadier Nyameka Xaba who reported to Ntlemenza. The same unit investigated other fabricated cases against Minister Pravin Gordhan, the so-called Rogue Unit and seems to have taken instructions or worked with SARS Commissioner Tom Moyane (“**Moyane**”). This can be seen from the incident involving SARS Legal Advisor Vlok Symington, who was prevented from leaving a boardroom until he handed back a document on the instructions of Moyane.

### **Leon Mbangwa – Nhleko’s Chief of Staff**

92. Leon / Lionel Mbangwa was employed by Nhleko as his Chief of Staff. The problem with his appointment is that he is a convicted criminal and illegal immigrant with no South African Identity Book/Card. He was convicted and sentenced to four years imprisonment for using a fraudulent ID. His security screening was processed through the IPID by Kgamanyane to avoid detection were it to be done through the SSA. This begs the question: Why would government minister want an illegal immigrant as his Chief of Staff?

**See Annexure A19.**

### **Reference group**

93. In October 2014, the Minister of Police, Nkosinathi Nhleko established a reference group to “...deal with issues of human resources, suspensions... the state of crime intelligence, administrative queries and perception of SAPS.” At the time, the Minister said the ministry would use the work done by the reference group to “...turnaround the image of the police and build public confidence in the service.” Surprisingly the reference group was comprised of public officials such as Adv Raymond Mathenjwa (**“Mathenjwa”**) from the NPA. Mathenjwa would later aggressively demand the docket into the renditions investigation – which was clearly beyond the scope of the reference group announced by Nhleko. Further, this was an undesirable situation as Mathenjwa was a senior prosecutor who was involved in deciding other matters referred to the NPA by the IPID. At the time, the IPID had already referred the docket to the National Director of Public Prosecutions for a decision on prosecution. That neither Mathenjwa nor the minister saw the clear conflict of interest which could compromise the IPID’s independence suggests that there

was some ulterior purpose to the establishment of the reference group.

### **Portfolio Committee on Police**

94. During the period of my suspension, IPID staff who were under attack by Kgamanyane directed correspondence to the Portfolio Committee on Police (“PCP”) – no response was ever received. I also wrote to the chairperson of the same committee alerting him to what was going on. I never received a response from him. **See Annexure A20.**



## **ZONDO COMMISSION OF INQUIRY**

Version 7 – 11 February 2019

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### **STATEMENT TO ZONDO COMMISSION OF INQUIRY BY ROBERT JOHN McBRIDE**

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#### **Legislative mandate**

1. The Independent Police Investigative Directorate is an independent body established by the Independent Police Investigative Directorate Act No. 1 of 2011, whose objects are set out in Section 2 thereof which, *inter alia* provides that the Independent Police Investigative Directorate (“IPID”) should give effect to the provisions of Section 206(6) of the Constitution of RSA i.e. to establish an independent police complaints body established by national legislation in order to investigate alleged misconduct of, or any offence committed by a member of the Police Services in any province as well as further to ensure independent oversight of the South African Police and Municipal Police Services. There are further objectives to the Act.
2. The independence and impartiality of the Directorate is entrenched in terms of Section 4 of the IPID Act, which specifically states that the Directorate i.e. IPID functions independently from the South African Police Service.
3. Section 7(4) of the IPID Act provides that:

*“The Executive Director must refer criminal offences revealed as a result of an investigation to the National Prosecuting Authority for criminal prosecution and notify the Minister of such referral.” See Annexure A1*

4. The regulations for the operation of IPID provide, *inter alia*, that an investigator of IPID, as part of his functions, after collecting all evidence, statements and technical expert reports, if applicable, must submit a report on the investigation of the offence to the Executive Director or the relevant Provincial Head, as the case may be, containing recommendations regarding further action, which may include disciplinary measures to be taken against a member of the South African Police Service or the Municipal Police Service or criminal prosecution of such member. **See Annexure A2.**
5. The Standard Operating Procedures of IPID effective as from the 1<sup>st</sup> April 2013 and in particular in Section 7.10 thereof provide a procedure for the completion and closing of files and dockets. **See Annexure A3.**

## **Appointment**

6. I was appointed the Executive Director of IPID on the 3<sup>rd</sup> March 2014, in terms of section 6 of the IPID Act. Upon my appointment, I asked to be briefed on all high profile cases. One of the cases I was briefed on was the so called “Rendition Case”. After the briefing it became clear to me that the investigation was not conducted independently and impartially in line with IPID Act. What followed is fully traversed in my founding affidavits and replying affidavits with annexures filed in the high court, labour court and the Constitutional court to challenge my unlawful suspension. See

attached affidavits marked **Annexures A4 to A6**. The Constitutional Court found the actions of the minister to be unlawful and unconstitutional and set them aside. **See Annexure A7.**

7. Before I was suspended, I had written to the Chairperson of the Portfolio Committee on Police, Mr Francois Beukman ("**Beukman**"), asking that I be allowed to clarify and account to the Portfolio Committee on media reports about "two contradicting reports". Mr Beukman rejected this offer, citing the sub-judice rule. This was a concern to me given the fact that the doctrine of separation of powers compels him to hold the Executive and IPID to account. It is noteworthy that some members of the Portfolio Committee on Police held a meeting with the then Minister of Police, Nkosinathi Nhleko ("**Nhleko**") where my removal from office and that of then DPCI Head, Anwa Dramat ("**Dramat**") were discussed. The next day, Nhleko, made a presentation to the same portfolio committee to start a process to remove Dramat. **See Annexure A8.**
8. I pause to reflect on the events that preceded the Werksmans report which was used by Nhleko to legitimise his unlawful actions and the complicity of Sandile July ("**July**"), who compiled the said report. After Nhleko appointed Werksmans to investigate the "two reports" which he falsely alleged he had been given by the IPID, several attempts were made by July to interview IPID National Head of Investigations, Matthews Sesoko ("**Sesoko**") and IPID Lead Investigator, Innocent Khuba ("**Khuba**"). Sesoko was contacted by July and Sesoko indicated his willingness to cooperate but asked that the request be sent via email and be directed to me – he also provided the

relevant email addresses. Interestingly, when the email was sent, Khuba's and Sesoko's email addresses were typed correctly but mine was not. The email meant for me was sent to [rmcbride@ipid.co.za](mailto:rmcbride@ipid.co.za) instead of [rmcbride@ipid.gov.za](mailto:rmcbride@ipid.gov.za). Sesoko picked up on what he thought had been an error and alerted Werksmans. The next time they sent the email to [rmcbrde@ipid.gov.za](mailto:rmcbrde@ipid.gov.za) (leaving out the "i" in mcbride). One is left with no other conclusion than that Werksmans was in cahoots with Nhleko to conduct a sham investigation that would enable Nhleko to get rid of myself and Dramat by hook or crook.

9. Furthermore, Khuba reported having received multiple calls from Nhleko's Personal Assistant, Amelia Monaheng asking him to meet with Nhleko, who was so desperate to get Khuba to falsely implicate me in wrongdoing that Nhleko himself called Khuba promising him that the Ministry would cover his travelling costs to Cape Town on a weekend so that I would not find out about it. These were the actions of a government minister who was willing to use any means, including lies and deceit to capture the criminal justice system. Nhleko would later go to Parliament to perpetuate the same lies with the collusion of some members of Parliament.

### **Werksmans report**

10. Mr Israel Kgamanyane ("Kgamanyane"), who was the IPID's Free State Provincial Head at the time, was appointed to act as Executive Director.
11. After his appointment, Kgamanyane instructed Sesoko and Khuba to attend

interviews at Werksmans. Thereafter the discredited Werksmans report was leaked to the Sunday Times (Stephan Hofstatter and Mzilikazi wa Afrika) and the Sunday Independent (Solly Maphumulo). The Sunday Times and Sunday Independent ran a series of false stories to prop up Nhleko's false narrative.

12. The Werksmans report was the sole evidence against me, Khuba and Sesoko. A critique of the dodgy Werksmans report was filed with my papers when I challenged my unlawful suspension in the High Court. **See Annexure A4 to A6.** It should be noted that the author of this dodgy report, Advocate Sandile July, was later quoted by Maema in court as having as threatened to challenge his subpoena in the High Court on the basis that his report was hearsay and he could not stand by it in a court of law. So this report, which cost the taxpayers over R1,3 million was used to get rid of me, Khuba and Sesoko, was not worth the paper it was written on. **See Annexure A9.**
13. Bizarrely, Nhleko later tried to get the IPID to pay R9 million in legal costs incurred by him in his unlawful and unconstitutional attempt to remove me as IPID Executive Director.
14. On 21 May 2015, Khuba and Sesoko were suspended by Kgamanyane on the instructions of the Minister for allegedly altering the IPID's Progress Report into the Rendition Investigation, dated 22 January 2015 ("**the first report**") with myself. However, it should be noted that I did not even know about the existence of the report

that was supposedly altered as it predated my appointment as IPID Executive Director.

15. During the eighteen (18) months of my suspension, I heard about Kgamanyane wreaking havoc in the IPID by initially suspending and transferring at least eight (8) senior managers for no other reason than that they worked with me or that they deposed affidavits about information which was within their knowledge as IPID employees.
16. At the time of my return to the IPID, on 19 October 2016, the Constitutional Court had confirmed the High Court decision to declare my suspension unlawful and set it aside, I became aware that more people had been displaced at IPID under the so-called “restructuring”.

### **Suspensions, transfers and dismissals**

17. I now deal with the suspensions and transfers that occurred immediately following my suspension.
18. Matthews Sesoko (“Sesoko”) was the Chief Director: Investigations and Information Management. He is the National Head of Investigations. He made an affidavit in my application to challenge the constitutionality of section 6(3) and 6(6). He was suspended on 21 May 2015. He was charged with altering the report into Zimbabwe renditions investigation. As soon as Kgamanyane was appointed as Acting Executive

Director, he asked for the Panday case which was under investigation by the IPID. To date, this case is not on the court roll. Kgamanyane also went to Limpopo and the North West and collected dockets in which former DPCI Head, Mthandazo Berning Ntlemeza and Major-General Jan Mabula were suspects.

19. Sesoko was subsequently unlawfully dismissed by Advocate Mxolisi Zondo (“**Zondo**”), who presided over General Sibiya’s disciplinary hearing, without having presented his case. He had requested a postponement owing to illness but Zondo rejected his medical certificate and dismissed him in absentia. In his written ruling, Zondo concedes that it would have been fair to hear Sesoko’s version of events but bizarrely dismisses him with immediate effect, without allowing him to state his defence, because the medical certificate submitted by Sesoko’s counsel was from a general practitioner and not from a specialist. Furthermore, Sesoko’s dismissal was on the basis of hearsay evidence of a single witness. **See Annexure A10.**
20. Sesoko was also criminally charged with Khuba and me for fraud and defeating the ends of justice. The criminal charges were withdrawn on 01 November 2016. Upon my return to office in 2016, a settlement was reached with Sesoko’s attorneys to reinstate him to his former position.
21. Upon my return to office, I discovered that there were allegations that of the manipulation of cases to artificially inflate the performance of the IPID in my absence. Kgamanyane even went to Parliament and reported that performance was much better in the absence of the suspended and transferred, however, this was a blatant lie which was told to make himself look good. Nhleko awarded him a bonus for good

performance.

22. Innocent Khuba ("Khuba") is the Provincial Head: Limpopo. Khuba was the lead investigator into allegations that some Zimbabweans were unlawfully handed over to Zimbabwean police, resulting in them being killed. He was suspended on 21 May 2015 on allegations of altering the investigation report into Zimbabwe 'renditions' with myself and Sesoko. During his suspension, he was told that he was suspended on the Minister's instructions. Khuba made an affidavit for my Constitutional Court case.
23. Prior to his dismissal, Khuba was approached by Werksmans, the Minister's PA and the Minister himself wanting to interview him and get him to implicate me. When he failed to implicate myself and Sesoko, disciplinary charges were brought against him. After six months of suspension, Khuba reached a plea bargain deal and was given a final written warning. Within a week, Khuba was summarily dismissed after he refused to falsely implicate me and Sesoko. Upon his refusal, he was dismissed with immediate effect.
24. Well before my appointment as IPID Executive Director, Ntlemeza himself had told Khuba while he was doing the rendition investigation that it was the only thing holding up his move to the DPCI after a 'hit on Dramat'. **See Annexure A11.**



25. After Khuba was dismissed, he was approached by officers from the Hawks and promised his job back if only he made a false statement saying I had forced him to change the rendition report. Khuba recorded this approach by a Colonel Mahlangu, who is heard imploring Khuba to make a false statement to empower Ntlemeza. In the recording, Colonel Mahlangu further says Khuba would be restored to his position if he made such a statement. **See Recording 1.**
26. Khuba has since been restored to his position through an order of the Labour Court. Furthermore, the criminal charges against Khuba, Sesoko and myself were withdrawn on 01 November 2016.
27. Felicia Ntshangase (“**Ntshangase**”) is the Gauteng Provincial Head who was suspended on 8 July 2015 by Kgamanyane. Five days after my suspension, Nhleko addressed IPID management and made disparaging remarks about the judiciary. Ntshangase made an affidavit regarding this. She was suspended on allegations of nepotism for recommending the appointments of 3 officials in her office. However, the decision to appoint said officials was made by Mr Kgamanyane. The Public Service Commission later cleared Ntshangase of wrongdoing and recommended action against Kgamanyane instead.
28. Nomkhosi Netsianda (“**Netsianda**”) is the head of corporate services. She was suspended on 19 August 2015 on allegations of leaking information to the media. The

leaked information concerned the appointment of the Deputy Minister's daughter to a Deputy Director: Investigation post in the Free State, where Kgamanyane was the Provincial Head. Ms Netsianda advised against the appointment of the Deputy Minister's daughter. The documentation and her written notes ended up in a City Press report. The Public Service Commission ("**PSC**") later found that the Deputy Minister's daughter did not have the experience required for the post. Netsianda was also charged for conducting herself in a disgraceful manner by raising her voice during the Audit Committee meeting, where the funding of the IPID's case challenging Nhleko's interference with the IPID's independence was discussed. The disciplinary case against Netsianda was driven by the chairperson of the Audit Committee. **See Annexure A12.**

29. Netsianda's position was advertised in May 2016 and Molefe Matsomela ("**Matsomela**") was subsequently appointed on a six-month contract. Matsomela's security screening was done before the post was advertised, clearly indicating that advertisement and interviews were just a formality – the post was earmarked for Matsomela. During his tenure, the so-called restructuring proceeded at full speed and some people were transferred to more than one position. Matsomela never came back to work upon my return to office and he resigned thereafter. Since Matsomela's appointment was irregular, the IPID has instituted a process to recover the fruitless expenditure relating thereto in the amount of R450 456.44.

30. The reputations of the affected officials were ruined. Kgamanayane even issued a directive for IPID staff not to talk to the suspended and transferred officials. Due to the fact that there were no grounds for the transfers, three officials, Antonett Mphago (“Mphago”), Viceroy Maoka (“Maoka”) and Moses Dlamini (“Dlamini”), lodged a dispute at the General Public Service Sectoral Bargaining Council (“GPSSBC”) for their unfair transfers and a case of unlawful transfer in the Labour Court. The three were transferred for 8 months at great cost to the IPID just to punish them for having worked with me. The total cost of the transfers is in excess of R1 million, including the arbitration award which they won at the GPSSBC.
31. Pule Hillary Viceroy Maoka (“Maoka”) is the Director: Litigation Services. He made an affidavit for my Constitutional Court case. Maoka lodged a complaint regarding the conduct of Adv. Baloyi of NPA in the rendition prosecution. Mr Maoka was precautionary transferred to Limpopo on 1 September 2015 on allegations of leaking information to the media. Maoka was transferred at the same time as Antonett Mphago (to Gauteng) and Moses Dlamini (to KwaZulu-Natal). He was never charged with leaking information but was charged with the cancellation of bookings and failure to inform his supervisor and failure to report sick leave to the supervisor. Maoka was re-instated by the Labour Court on 29 April 2016, returning to his office on 06 May 2016. He was suspended on 12 May 2016 for 'providing legal assistance to his colleagues and for failure to make financial disclosure'. **See Annexure A13.**

32. Moses Dlamini (“**Dlamini**”) is the National Spokesman who was suspended on 20 June 2016. He made an affidavit in my Constitutional Court case. Dlamini was precautionary transferred to KwaZulu-Natal on 1 September 2015 on allegations of leaking information to the media. Dlamini was transferred at the same time as Antonette Mphago (to Gauteng) and Viceroy Maoka (to Limpopo). He was never charged with leaking information but was charged with the cancellation of bookings and failure to report sick leave to the supervisor timeously. Dlamini was re-instated by the Labour Court on 29 April 2016, returning to his office on 06 May 2016. He was suspended on 20 June 2016 for speaking to suspended officials (Maoka and McBride) against the directive of Kgamanyane, as well as allegations of sending disparaging emails about officials to IPID staff. Kgamanyane had issued a directive that IPID staff should not communicate with transferred and suspended officials. Dlamini was served with a letter of intent to permanently transfer him to Eastern Cape within 3 days of returning to the office. After objecting, he was transferred to the post of Director: Investigations at National Office effective 1 July 2016 as part of the “restructuring” After he objected to the transfer, he was suspended. **See Annexure A13.**
33. Dlamini's disciplinary hearing was presided over by the Limpopo Director of Public Prosecutions, Advocate Ivy Thenga (“**Thenga**”) to whom IPID makes referrals of cases investigated by it – a clear conflict of interest. Thenga said that she had been instructed to finalise the hearing over the weekend. Dlamini was reinstated upon my return to office.

34. Antonett Mphago (“Mphago”) is the Director: Executive Support in the office of the Executive Director. She was precautionary transferred to Gauteng on allegations of leaking information to the media. The said information related to the appointment of the daughter of the Deputy Minister of Police's daughter to a post of Deputy Director: Investigations in the Free State. She was transferred to Gauteng provincial office to the position of Deputy Director: Corporate Services position pending finalisation of investigations. She was never charged with leaking of information nor notified of the outcome of the investigation. On 1 December 2015, Mphago's transfer was uplifted after she had written to Kgamanyane informing him that 60 days had elapsed since her transfer and that no charges had been brought against her. She was denied access to her office and had to squat in the passage. On 30 June 2016 she was transferred to a position of Director: Compliance Monitoring, as a result of 'restructuring'. Mphago was under investigation on allegations of meeting/talking to with me on my visit to the national office on 9 June 2016. **See Annexure A13.**

## **Restructuring**

35. It is clear that Kgamanyane subscribed to the view that “If it works – break it!”, as there is no other way to comprehend the rationale behind the restructuring that went on during his tenure. He was like a mad scientist, transferring people to positions for which that had no competencies or experience. Some people even had to seek medical attention as a result of the senseless restructuring.
36. Vinesh Boodhoo (**“Boodhoo”**) was the Director: Investigation in Gauteng. He was

appointed by Ntshangase with two other people, who were forced out of IPID due to their association with Ms Ntshangase. Dan Morema (“Morema”) was appointed to act in Ntshangase's position, while she was on suspension. Morema victimised Boodhoo, as a result, he lodged a complaint against Morema. Boodhoo received correspondence informing him that the outcome of the investigation of his complaint was that he should be transferred out of Gauteng. Boodhoo was permanently transferred to the post of Director: Investigations in the Eastern Cape effective 1 July 2016 as a result of “restructuring”.

37. Marianne Moroasui (**“Moroasui”**) is the Chief Director: Legal Services. In March 2016 Kgamanyane had the Provincial Head of Kimberly and the then Deputy Provincial Head of the Western Cape take over the running of Legal Services whilst she was in the office. During the purported restructuring of the IPID, she was informed that she would be transferred to a position of Provincial Head in either Mpumalanga or Kimberley. She resisted the move and referred the matter to the PSA. Whilst still in consultation with the Kgamanyane, he made the decision to finally transfer her to Kimberley as Provincial Head. She was instructed to commence in Kimberley on 1 July 2016. She did not comply with the instruction and continued reporting to the National Office and one day she went out to lunch and upon her return her “biometric access” was deactivated and she could not access the National Office. Moroasui was informed by Matsomela, who was at the time acting as the head of Corporate Services that she had to report to Kimberly. Her Colleagues had to bring her handbag,

work bag and other personal belongings to her on the street as she was refused access, even to the National Office parking.

38. Zuziwe Cele (**“Cele”**) is the Deputy Director: Supply Chain Management. She was permanently transferred to Deputy Director: Corporate Services in Gauteng Province effective 1 August 2016 as a result of restructuring. She was seen to be a stumbling block to procurement.
39. Lindokuhle Ngcongco (**“Ngcongco”**) was the Chief Financial Officer (“CFO”) was transferred to Gauteng as the Provincial Head to head investigations. She was perceived to be a stumbling block to Kgamanyane’s plans for procurement. She was also opposed to the IPID paying for legal costs incurred by the Minister of Police (Nhleko). She has since left the IPID.
40. Mamodishe Molope (**“Molope”**) is the Chief Director: Compliance Monitoring and Compliance Management. She was transferred to Mpumalanga as Provincial Head to lead investigations, as part of restructuring.
41. Quite a number of other junior people were also transferred from their positions as a result of “restructuring” initiated by Kgamanyane with the approval of former Minister of Police, Nkosinathi Nhleko.

## **Return to office**

42. I returned to office on 19 October 2016 and requested Kgamanyane for a handover report. He was quite petulant and refused to give me such a report. He never returned to work and was irregularly transferred by Nhleko to the DPCI. He was accepted by former Hawks Head, Mthandazo Ntlemeza and appointed to the DPCI structure in the Free State. I had no say in Kgamanyane's transfer, which was done by Nhleko and Ntlemeza without any consultation. There is no greater example of interference in the operations of the IPID by a minister who had been found to have acted unlawfully and unconstitutionally by the Constitutional Court. To make matters worse, Kgamanyane was facing disciplinary action for the havoc he had caused at IPID. I wrote to Ntlemeza about my concerns. See **Annexure A14**.

43. Nhleko had awarded Kgamanyane a performance bonus which was clearly a gratification. He was the only one in IPID to be awarded a performance bonus.

## **Infiltration of IPID by Crime Intelligence**

44. I also found that IPID had been infiltrated by Crime Intelligence in the form of Tlou Kgomo ("Kgomo") and Emily Motsugi ("**Motsugi**"). Kgomo had been appointed as Director: Investigations. He was appointed to act as head of investigations in Sesoko's position. The two beat a hasty retreat back to Crime Intelligence soon after my return to office. My



next encounter with Kgomo was in Parliament where he was part of Phahlane's team to counter IPID's investigations. Kgomo would later approach IPID investigators, Mandla Mahlangu (**"Mahlangu"**) and Cedrick Nkabinde (**"Nkabinde"**), to offer them Brigadier positions to induce them to make false statements to implicate IPID managers in wrongdoing. In a recording made by one of the investigators, Kgomo can be heard making such an offer to Mahlangu. He confirms to Mahlangu that he is working with the North West team led by Major General Jan Mabula (**"Mabula"**) investigating a concocted case that would bring me "down", along with other IPID investigators and torpedo the investigation against Phahlane. Kgomo also took Mahlangu to Potchefstroom to meet Mabula. **See Annexure A15 (there's also a recording).**

45. Upon my return from my suspension on 19 October 2016 I was alerted of irregularities on how investigations had been conducted during the time when I was on suspension. There were allegations that certain cases that were being investigated by the IPID had been pre-maturely closed without carrying out proper investigation processes as contained in the Standard Operating Procedures. This was done in certain instances to push the statistics and other acts that amounted to defeating the ends of justice. These cases were termed "special closures". This was intended to manipulate statistics to give an impression that performance had been better under Kgamanyane. I instructed our Integrity Strengthening Unit to investigate these allegations. The Auditor-General also flagged some of these cases. One employee has already been dismissed as a result of this investigation. Another senior employee, Dan Morema, resigned when he was approached to make a statement. **See Annexure A16.**

## **Investigation into Phahlane**

46. Soon after my arrival I received a complaint from Paul O'Sullivan ("**O'Sullivan**"). The complaint was about a case of corruption and money laundering that had been opened against the then Acting National Commissioner of Police, General Phahlane. This case was first reported to the IPID before my arrival.
47. O'Sullivan had brought the case to the attention of Mr Kgamanyane, the Acting Executive Director, in March 2016 while I was on suspension. The complaint brought by O'Sullivan was that the case had not been investigated and he requested me to intervene and ensure that matter was investigated. One of the strange things that I found upon my return was that two cases had been opened, one as a duplicate of the other and vice versa – and both were then closed as duplicates of each other.
48. At the end of November 2016, a Task Team was formed that was to investigate the cases of corruption and money laundering that were levelled against General Phahlane. The Task Team comprised of Mandla Mahlangu, Temane Binang, Mantsha Raphesu and Cedrick Nkabinde.
49. The case to be investigated had to do with the construction of Phahlane's house at Sable Hills Estate allegedly with funds that were provided by a service provider to the SAPS. There was also the case of a music system worth R80 000 that was alleged to have been paid from the account of a service provider to the SAPS. Further there was a case of

vehicles in Phahlane's possession that, according to him, were either purchased and owned by him or sponsored for his use. The IPID investigated all cases and there was clear evidence of a corrupt relationship between Phahlane and service providers to the SAPS.

50. During January 2017 a search warrant was executed at the Sable Hills home of Phahlane. The purpose of the search was to identify the music system that was bought and paid for by a SAPS service provider. Present at the search was the person who had installed the music system, this was for purposes of identifying that the music system in Phahlane's house was the same music system that had been purchased by funds from a SAPS service provider and that he had installed in Phahlane's house.

51. After the search warrant was executed at Phahlane's house, he initiated a civil suit challenging the lawfulness of the search warrant.

52. The parties have exchanged papers in this matter and it was dormant since the latter part of 2017. Recently one of the original Task Team members, Cedrick Nkabinde, who was approached by Kgomo as mentioned in preceding paragraphs, deposed a supporting affidavit for Phahlane whilst he was undergoing a disciplinary process for several acts of misconduct. Nkabinde resigned with immediate effect on 19 October 2018, and his disciplinary hearing did not proceed.

### 53. Counter-investigation

54. I want to pause here and go back to when the initial investigation into the case of corruption and money laundering were initiated against Phahlane. O'Sullivan was the complainant and also because of his background in the matter he accompanied IPID investigators to the Sable Hills Estate to point out several witnesses to the case that the IPID was investigating. On some of the occasions he accompanied the IPID investigators together with his associate and attorney Sarah-Jane Trent.

55. As a result of the on-going investigations by the IPID with the assistance of O'Sullivan and Trent, Phahlane used his powers as the Acting National Commissioner to set up a team from the North West (Mabula Team) to start a counter-investigation on the IPID investigation against himself.

56. This SAPS counter-investigation was authorised under the guise of a security breach against the Acting National Commissioner. The North West Provincial Commissioner together with the Mabula Team concocted a report that was utilised to authorise their travel to Gauteng to investigate the purported security breach. Crime Intelligence ("CI") had earlier done an investigation of the alleged security breach and it found that there was in fact no security breach. The officers who did the investigation made statements to this effect. As a result of the concocted report, General Makhele was charged with defeating the ends of justice. This case is still with the NPA.

57. The Mabula Team then proceeded to counter the investigation of the IPID by approaching all the witnesses in the IPID investigation to get them to change their initial version against Phahlane and the SAPS service providers and their involvement in the construction of Phahlane's house and the cars.
58. Their counter-investigation resulted in a case being opened, Kameelfdrift 12/01/2017, against O'Sullivan and his associate Trent. The charges against them were, amongst others of impersonating IPID officials in terms of section 33(5) of the IPID Act, these were clearly trumped up charges. The charges were that they had visited Phahlane's Sable Hills home together with IPID investigators and that during the said visit they had impersonated IPID investigators.
59. During Trent's arrest her mobile phone was unlawfully confiscated and booked in for investigation in order to try and support the charges that were being fabricated against the pair and later on the IPID investigators that were added.
60. O'Sullivan and Trent made a number of appearances in the Pretoria Magistrate Court, in the case emanating from the Kameelfdrift case and around May 2017. Brigadier Ncube, one of the members of the Mabula Team made contact with two of the IPID investigators. He informed them that he was the investigator in the Kameelfdrift 12/01/2017 case and that he intended on adding them as co-accused in the case already before the Pretoria Magistrate Court.

61. Trent's phone was stolen by the Mabula Team and taken to Israel to be downloaded. The contents were leaked to the Sunday Times in a bid to falsely implicate myself and my investigators in wrongdoing to protect Phahlane.

62. There was a litany of charges that were brought against Mahlangu and Binang who were members of the IPID Task Team, at the top of the list were charges of contravening section 33(5) and section 33(2) of the IPID Act. The two investigators were added in State versus Sarah-Jane Trent and three others, which was held the Pretoria Magistrate Court. When Ncube had earlier come to IPID to obtain the statements of Mahlangu and Binang, I asked him why he was in Gauteng as he was based in the North West, he opened a case of intimidation against me.

63. The State Advocate in the matter was a Molatlhwa Mashuga ("**Mashuga**"), who also has some links to the NW SAPS team. The case was remanded on numerous times at the behest of the State, apparently for further investigations. After the numerous postponements for further investigations by Mashuga, the defence in October 2017, i.e IPID made an application that the matter be struck off the roll in terms of section 342A(3)(c) of the Criminal Procedure Act, No 51 of 1977, which deals with unreasonable delays in a matter before a court "

*"(3) If the court finds that the completion of the proceedings is being delayed unreasonably, the court may issue any such order as it deems fit in order to*

*eliminate the delay and any prejudice arising from it or to prevent further delay or prejudice, including an order-*

(a) ...;

(b) ...;

(c) *where the accused has not yet pleaded to the charge, that the case be struck off the roll and the prosecution not be resumed or instituted de novo without the written instruction of the attorney-general;”*

64. The Magistrate made an order that the matter be struck off the roll in terms of the above-mentioned section. The matter could only be re-enrolled with the written instruction of the NDPP, Shaun Abrahams at the time. This order by the Magistrate was made In October 2017.

65. It's important to indicate that neither the order by the Magistrate made in terms of section 342A(3)(c) of the Criminal Procedure Act nor the Prinsloo J Order, made in November 2017, stopped the Mabula Team from continuing with their counter investigation. This was clear when immediately after both orders Ncube took another warning statement, this time against Mantsha Raphesu and threatened to arrest the other members of the Task Team including myself, but despite all the threats the fabricated case is yet to be re-enrolled, further proving that the charges are baseless and are trumped up.

**Interdict and main application wrt the counter-investigation (Court order in favour of the IPID)**

66. With the on-going counter-investigation by the Mabula Team, it was clear that the intention was to scupper the IPID investigation and the IPID brought an urgent application before the North Gauteng High Court in order to stop the counter-investigation and also to seek a declaratory that members of the SAPS that were themselves subjects of an investigation by the IPID should not investigate or oversee an investigation against members of the IPID.

67. An urgent interdict was sought against the Phahlane, at the time, the North West Provincial Commissioner, Mabula and Ncube. Later, in the main application, the other members of the Mabula Team were added as respondents as they were conducting this counter-investigation against members of the IPID.

68. Throughout the exchange of papers in this matter, the Mabula Team insisted that the cases that the IPID stated they were investigating against them were “cold cases”. This was proven to be false as a list was annexed in the papers to show the status of the cases against the members of the Mabula Team. It is, in any event, disingenuous for Mabula to say as the evidence shows that the only reason the cases had not progressed was due to them being suppressed. There is a **recording** in which one of the suspects admits to torturing the deceased in the Makau case and he implicates Mabula. See **Recording 3**



69. An agreement was reached by the parties and it was made the order of the court by Prinsloo J. At the time the order was made, Phahlane had been suspended as the Acting National Commissioner and General Mothiba had been appointed to act. Prior to the Prinsloo J order that was made on 28 November 2017, Mothiba had also been engaged on countless occasions to try and resolve the matter outside of the courts.

70. Prior the making of the Prinsloo J order, there had been countless engagements with the different senior management within SAPS in a bid to avoid litigation and come to an amicable solution to the number of civil suits that were in the courts. The Portfolio Committee on Police also tried to intervene by requesting an appearance and briefing by Phahlane, whilst he was still acting National Commissioner, and his team and the Executive Director and his team in order to try and resolve the battle that was playing out between the two departments.

71. All of the engagements and attempts to amicably resolve the impasse between the two sister departments did not assist and this culminated in the Prinsloo J interim order that was agreed upon by the parties. It was further agreed that the main application where a declaratory was sought would be heard at a later stage and would ensure that the issue of the counter-investigation would be finalised.

72. Despite the order that was made, the IPID became aware after the Mabula Team were continuing with the counter-investigation against the IPID, in the form of the investigators and myself.

73. As a result the IPID continued to engage the SAPS, the ministry as well as the office of the NDPP, in trying to ascertain whether the continuing investigation was sanctioned at a senior level.

74. There were also meetings held with General Sitole and Minister Cele, after their appointments to their respective offices, in order to bring them up to speed with these matters and also with a hope that the Minister would intervene.

75. Despite all the above efforts on the part of the IPID, as can be seen from the numerous letters to the various stakeholders, the National Commissioner only indicated that he would abide by the order of the court. The Minister on the other hand was unrepresented when the matter was argued for a final order on 21 June 2018. **See Annexure L.**

76. The matter was set down for argument before Judge Tuchten on 21 and 22 June 2018. , From the outset Phahlane agreed that he would agree to not take part or to oversee any investigation that was carried out by the members of the Mabula Team and that was also made part of the Tuchten Order that was made on 26 June 2018.

77. An important point to note is that, the National Commissioner of the SAPS, Sitole prior to the proceedings had entered a notice to abide by the order of the court and this was done in his official capacity.

78. The interpretation of this notice to abide coming from the National Commissioner's office led to the question that if the Commissioner abides by the prayers of the IPID, what locus standi did the members of the Mabula Team have to continue with an investigation that did not seem to be sanctioned by the Head of the SAPS?

79. There were arguments for both sides and at the last minute the Deputy National Commissioner, General Mfazi, gave a written undertaking that the members of the Mabula Team would no longer be involved in any "revenge-investigations" against members of the IPID that were investigating them.

80. The term "revenge-investigation" was made by Judge Tuchten in his judgment on 26 June 2018. The order was in effect drafted around section 25 of the IPID Act, which speaks to instances where an investigator has a conflict of interest in any investigation that he carries out that he would have to declare such interest. The SAPS Act does not have a similar clause that dealt with conflicts of interest. The Judge in this matter added that such members of the SAPS should also be precluded from overseeing such investigation.

81. Further the above gap in the SAPS legislation would be temporarily resolved by the Tuchten Judgment until such a time that there were appropriate regulations or standing orders or national legislation dealing with this gap.

### **Court order regarding search and seizure by Phahlane on vehicle investigation**

82. During the investigation into the Phahlane vehicle case, which he claimed he owned and others were sponsored, the IPID learnt that there were several SAPS service providers that Phahlane was conducting acts of criminality with. Amongst the service providers were Durandt Snyman, Keith Keating, the proprietor of FDA and others. The relationship between these parties was unravelled and IPID together with members of the DPCI conducted search warrants on the properties of the above-mentioned service providers on 4 December 2017. **See Annexure A17.**

83. The lawfulness of the search warrants was challenged. The applicants raised technical challenges against the affidavit utilised to authorise the search warrant by the magistrate, also that the IPID officials are not police officials and therefore cannot execute a search warrant in terms of the Criminal Procedure Act and other technicalities.

84. The matter was set down and heard on 18 June 2018 and the judgement was delivered on 3 August 2018 by Judge Kollapen. This judgment dealt thoroughly with all the technical points raised by the applicants. **See Annexure N.**

85. The applicants later brought an application for leave to appeal and it was dismissed. We have been advised by IPID's attorneys that the applicants are petitioning the Supreme Court of Appeal.

## **NPA bias**

86. The NPA under the leadership of Advocate Shaun Abrahams (**“Abrahams”**), working with Advocates Sibongile Mzinyathi (**“Mzinyathi”**), George Baloyi (**“Baloyi”**), Sello Maema (**“Maema”**), Molatlhwa Mashuga (**“Mashuga”**), Raymond Mathenjwa (**“Mathenjwa”**) has lost all credibility. I am of the belief that these advocates are a core group that has been at the forefront of enabling the capture of the criminal justice cluster through the persecution of corruption fighters. They were also involved in the protection of criminal suspects by declining to prosecute suspects investigated by the IPID in cases where their subordinates who are experienced prosecutors had recommended prosecution based on abundant evidence but the advocates would override those decisions.

87. I wrote to Abrahams on numerous occasions requesting that he review Mzinyathi's and Baloyi's decisions to undermine the decisions of Senior Public Prosecutors. Abrahams simply agreed with Mzinyathi's and Baloyi's actions. **See Annexure A18.**

88. I expressed my concern that Advocate Sello Maema (**“Maema”**) had been allowed to prosecute us as in my view his actions to prosecute us without a shred of evidence involves dishonesty and a lack of integrity.

89. Mashuga was behind the prosecution of IPID investigators and O'Sullivan, against a court order, on fabricated charges to torpedo the IPID's investigation into Phahlane.

### **The role of Hogan Lovells**

90. Hogan Lovells allowed itself to be used to hollow out public institutions, especially the IPID and the DPCI. This firm was used to get rid of people in the IPID, the DPCI. Common figures in the tainted disciplinary processes with fabricated charges include Advocate William Mokhari (“**Mokhari**”) and Advocate Mxolisi Zondo (“**Zondo**”). In IPID, Sesoko was dismissed after submitting a sick note, without even being allowed to present his case by Zondo with Mokgatle and Mokhari presiding over a sham disciplinary hearing. A similar thing had happened to Sibiya at the DPCI. The same team, except for the presiding officer, were involved in Khuba’s disciplinary hearing – the result was that Khuba was dismissed for failing to implicate me in wrongdoing.

### **Crimes against the State (CATS) unit**

91. Myself, Sesoko and Khuba were investigated by the DPCI’s Crimes Against the State (Cats) unit for fraud and defeating the ends of justice. The charges were dropped as there was never any shred of evidence. This unit was used to pursue a political agenda and to target individuals within the criminal justice cluster who stood up against state capture. It is headed by Brigadier Nyameka Xaba who reported to Ntlemenza. The same unit investigated other fabricated cases against Minister Pravin Gordhan, the so-called Rogue Unit and seems to have taken instructions or worked with SARS Commissioner Tom Moyane (“**Moyane**”). This can be seen from the incident involving SARS Legal Advisor Vlok Symington, who was prevented from leaving a boardroom until he handed back a document on the instructions of Moyane.

### **Leon Mbangwa – Nhleko’s Chief of Staff**

92. Leon / Lionel Mbangwa was employed by Nhleko as his Chief of Staff. The problem with his appointment is that he is a convicted criminal and illegal immigrant with no South African Identity Book/Card. He was convicted and sentenced to four years imprisonment for using a fraudulent ID. His security screening was processed through the IPID by Kgamanyane to avoid detection were it to be done through the SSA. This begs the question: Why would government minister want an illegal immigrant as his Chief of Staff?

**See Annexure A19.**

### **Reference group**

93. In October 2014, the Minister of Police, Nkosinathi Nhleko established a reference group to “...deal with issues of human resources, suspensions... the state of crime intelligence, administrative queries and perception of SAPS.” At the time, the Minister said the ministry would use the work done by the reference group to “...turnaround the image of the police and build public confidence in the service.” Surprisingly the reference group was comprised of public officials such as Adv Raymond Mathenjwa (“**Mathenjwa**”) from the NPA. Mathenjwa would later aggressively demand the docket into the renditions investigation – which was clearly beyond the scope of the reference group announced by Nhleko. Further, this was an undesirable situation as Mathenjwa was a senior prosecutor who was involved in deciding other matters referred to the NPA by the IPID. At the time, the IPID had already referred the docket to the National Director of Public Prosecutions for a decision on prosecution. That neither Mathenjwa nor the minister saw the clear conflict of interest which could compromise the IPID’s independence suggests that there

was some ulterior purpose to the establishment of the reference group.

### **Portfolio Committee on Police**

94. During the period of my suspension, IPID staff who were under attack by Kgamanyane directed correspondence to the Portfolio Committee on Police (“PCP”) – no response was ever received. I also wrote to the chairperson of the same committee alerting him to what was going on. I never received a response from him. **See Annexure A20.**



## **ZONDO COMMISSION OF INQUIRY**

Version 7 – 11 February 2019

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### **STATEMENT TO ZONDO COMMISSION OF INQUIRY BY ROBERT JOHN McBRIDE**

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#### **Legislative mandate**

1. The Independent Police Investigative Directorate is an independent body established by the Independent Police Investigative Directorate Act No. 1 of 2011, whose objects are set out in Section 2 thereof which, *inter alia* provides that the Independent Police Investigative Directorate ("IPID") should give effect to the provisions of Section 206(6) of the Constitution of RSA i.e. to establish an independent police complaints body established by national legislation in order to investigate alleged misconduct of, or any offence committed by a member of the Police Services in any province as well as further to ensure independent oversight of the South African Police and Municipal Police Services. There are further objectives to the Act.
2. The independence and impartiality of the Directorate is entrenched in terms of Section 4 of the IPID Act, which specifically states that the Directorate i.e. IPID functions independently from the South African Police Service.
3. Section 7(4) of the IPID Act provides that:

*“The Executive Director must refer criminal offences revealed as a result of an investigation to the National Prosecuting Authority for criminal prosecution and notify the Minister of such referral.” See Annexure A1*

4. The regulations for the operation of IPID provide, *inter alia*, that an investigator of IPID, as part of his functions, after collecting all evidence, statements and technical expert reports, if applicable, must submit a report on the investigation of the offence to the Executive Director or the relevant Provincial Head, as the case may be, containing recommendations regarding further action, which may include disciplinary measures to be taken against a member of the South African Police Service or the Municipal Police Service or criminal prosecution of such member. **See Annexure A2.**
5. The Standard Operating Procedures of IPID effective as from the 1<sup>st</sup> April 2013 and in particular in Section 7.10 thereof provide a procedure for the completion and closing of files and dockets. **See Annexure A3.**

## **Appointment**

6. I was appointed the Executive Director of IPID on the 3<sup>rd</sup> March 2014, in terms of section 6 of the IPID Act. Upon my appointment, I asked to be briefed on all high profile cases. One of the cases I was briefed on was the so called “Rendition Case”. After the briefing it became clear to me that the investigation was not conducted independently and impartially in line with IPID Act. What followed is fully traversed in my founding affidavits and replying affidavits with annexures filed in the high court, labour court and the Constitutional court to challenge my unlawful suspension. See

attached affidavits marked **Annexures A4 to A6**. The Constitutional Court found the actions of the minister to be unlawful and unconstitutional and set them aside. **See Annexure A7.**

7. Before I was suspended, I had written to the Chairperson of the Portfolio Committee on Police, Mr Francois Beukman ("**Beukman**"), asking that I be allowed to clarify and account to the Portfolio Committee on media reports about "two contradicting reports". Mr Beukman rejected this offer, citing the sub-judice rule. This was a concern to me given the fact that the doctrine of separation of powers compels him to hold the Executive and IPID to account. It is noteworthy that some members of the Portfolio Committee on Police held a meeting with the then Minister of Police, Nkosinathi Nhleko ("**Nhleko**") where my removal from office and that of then DPCI Head, Anwa Dramat ("**Dramat**") were discussed. The next day, Nhleko, made a presentation to the same portfolio committee to start a process to remove Dramat. **See Annexure A8.**
8. I pause to reflect on the events that preceded the Werksmans report which was used by Nhleko to legitimise his unlawful actions and the complicity of Sandile July ("**July**"), who compiled the said report. After Nhleko appointed Werksmans to investigate the "two reports" which he falsely alleged he had been given by the IPID, several attempts were made by July to interview IPID National Head of Investigations, Matthews Sesoko ("**Sesoko**") and IPID Lead Investigator, Innocent Khuba ("**Khuba**"). Sesoko was contacted by July and Sesoko indicated his willingness to cooperate but asked that the request be sent via email and be directed to me – he also provided the

relevant email addresses. Interestingly, when the email was sent, Khuba's and Sesoko's email addresses were typed correctly but mine was not. The email meant for me was sent to [rmcbride@ipid.co.za](mailto:rmcbride@ipid.co.za) instead of [rmcbride@ipid.gov.za](mailto:rmcbride@ipid.gov.za). Sesoko picked up on what he thought had been an error and alerted Werksmans. The next time they sent the email to [rmcbrde@ipid.gov.za](mailto:rmcbrde@ipid.gov.za) (leaving out the "i" in mcbride). One is left with no other conclusion than that Werksmans was in cahoots with Nhleko to conduct a sham investigation that would enable Nhleko to get rid of myself and Dramat by hook or crook.

9. Furthermore, Khuba reported having received multiple calls from Nhleko's Personal Assistant, Amelia Monaheng asking him to meet with Nhleko, who was so desperate to get Khuba to falsely implicate me in wrongdoing that Nhleko himself called Khuba promising him that the Ministry would cover his travelling costs to Cape Town on a weekend so that I would not find out about it. These were the actions of a government minister who was willing to use any means, including lies and deceit to capture the criminal justice system. Nhleko would later go to Parliament to perpetuate the same lies with the collusion of some members of Parliament.

### **Werksmans report**

10. Mr Israel Kgamanyane ("Kgamanyane"), who was the IPID's Free State Provincial Head at the time, was appointed to act as Executive Director.
11. After his appointment, Kgamanyane instructed Sesoko and Khuba to attend

interviews at Werksmans. Thereafter the discredited Werksmans report was leaked to the Sunday Times (Stephan Hofstatter and Mzilikazi wa Afrika) and the Sunday Independent (Solly Maphumulo). The Sunday Times and Sunday Independent ran a series of false stories to prop up Nhleko's false narrative.

12. The Werksmans report was the sole evidence against me, Khuba and Sesoko. A critique of the dodgy Werksmans report was filed with my papers when I challenged my unlawful suspension in the High Court. **See Annexure A4 to A6.** It should be noted that the author of this dodgy report, Advocate Sandile July, was later quoted by Maema in court as having as threatened to challenge his subpoena in the High Court on the basis that his report was hearsay and he could not stand by it in a court of law. So this report, which cost the taxpayers over R1,3 million was used to get rid of me, Khuba and Sesoko, was not worth the paper it was written on. **See Annexure A9.**
13. Bizarrely, Nhleko later tried to get the IPID to pay R9 million in legal costs incurred by him in his unlawful and unconstitutional attempt to remove me as IPID Executive Director.
14. On 21 May 2015, Khuba and Sesoko were suspended by Kgamanyane on the instructions of the Minister for allegedly altering the IPID's Progress Report into the Rendition Investigation, dated 22 January 2015 ("**the first report**") with myself. However, it should be noted that I did not even know about the existence of the report

that was supposedly altered as it predated my appointment as IPID Executive Director.

15. During the eighteen (18) months of my suspension, I heard about Kgamanyane wreaking havoc in the IPID by initially suspending and transferring at least eight (8) senior managers for no other reason than that they worked with me or that they deposed affidavits about information which was within their knowledge as IPID employees.
16. At the time of my return to the IPID, on 19 October 2016, the Constitutional Court had confirmed the High Court decision to declare my suspension unlawful and set it aside, I became aware that more people had been displaced at IPID under the so-called “restructuring”.

### **Suspensions, transfers and dismissals**

17. I now deal with the suspensions and transfers that occurred immediately following my suspension.
18. Matthews Sesoko (“Sesoko”) was the Chief Director: Investigations and Information Management. He is the National Head of Investigations. He made an affidavit in my application to challenge the constitutionality of section 6(3) and 6(6). He was suspended on 21 May 2015. He was charged with altering the report into Zimbabwe renditions investigation. As soon as Kgamanyane was appointed as Acting Executive

Director, he asked for the Panday case which was under investigation by the IPID. To date, this case is not on the court roll. Kgamanyane also went to Limpopo and the North West and collected dockets in which former DPCI Head, Mthandazo Berning Ntlemeza and Major-General Jan Mabula were suspects.

19. Sesoko was subsequently unlawfully dismissed by Advocate Mxolisi Zondo (“**Zondo**”), who presided over General Sibiya’s disciplinary hearing, without having presented his case. He had requested a postponement owing to illness but Zondo rejected his medical certificate and dismissed him in absentia. In his written ruling, Zondo concedes that it would have been fair to hear Sesoko’s version of events but bizarrely dismisses him with immediate effect, without allowing him to state his defence, because the medical certificate submitted by Sesoko’s counsel was from a general practitioner and not from a specialist. Furthermore, Sesoko’s dismissal was on the basis of hearsay evidence of a single witness. **See Annexure A10.**
20. Sesoko was also criminally charged with Khuba and me for fraud and defeating the ends of justice. The criminal charges were withdrawn on 01 November 2016. Upon my return to office in 2016, a settlement was reached with Sesoko’s attorneys to reinstate him to his former position.
21. Upon my return to office, I discovered that there were allegations that of the manipulation of cases to artificially inflate the performance of the IPID in my absence. Kgamanyane even went to Parliament and reported that performance was much better in the absence of the suspended and transferred, however, this was a blatant lie which was told to make himself look good. Nhleko awarded him a bonus for good

performance.

22. Innocent Khuba ("Khuba") is the Provincial Head: Limpopo. Khuba was the lead investigator into allegations that some Zimbabweans were unlawfully handed over to Zimbabwean police, resulting in them being killed. He was suspended on 21 May 2015 on allegations of altering the investigation report into Zimbabwe 'renditions' with myself and Sesoko. During his suspension, he was told that he was suspended on the Minister's instructions. Khuba made an affidavit for my Constitutional Court case.
23. Prior to his dismissal, Khuba was approached by Werksmans, the Minister's PA and the Minister himself wanting to interview him and get him to implicate me. When he failed to implicate myself and Sesoko, disciplinary charges were brought against him. After six months of suspension, Khuba reached a plea bargain deal and was given a final written warning. Within a week, Khuba was summarily dismissed after he refused to falsely implicate me and Sesoko. Upon his refusal, he was dismissed with immediate effect.
24. Well before my appointment as IPID Executive Director, Ntlemeza himself had told Khuba while he was doing the rendition investigation that it was the only thing holding up his move to the DPCI after a 'hit on Dramat'. **See Annexure A11.**



25. After Khuba was dismissed, he was approached by officers from the Hawks and promised his job back if only he made a false statement saying I had forced him to change the rendition report. Khuba recorded this approach by a Colonel Mahlangu, who is heard imploring Khuba to make a false statement to empower Ntlemeza. In the recording, Colonel Mahlangu further says Khuba would be restored to his position if he made such a statement. **See Recording 1.**
26. Khuba has since been restored to his position through an order of the Labour Court. Furthermore, the criminal charges against Khuba, Sesoko and myself were withdrawn on 01 November 2016.
27. Felicia Ntshangase (“**Ntshangase**”) is the Gauteng Provincial Head who was suspended on 8 July 2015 by Kgamanyane. Five days after my suspension, Nhleko addressed IPID management and made disparaging remarks about the judiciary. Ntshangase made an affidavit regarding this. She was suspended on allegations of nepotism for recommending the appointments of 3 officials in her office. However, the decision to appoint said officials was made by Mr Kgamanyane. The Public Service Commission later cleared Ntshangase of wrongdoing and recommended action against Kgamanyane instead.
28. Nomkhosi Netsianda (“**Netsianda**”) is the head of corporate services. She was suspended on 19 August 2015 on allegations of leaking information to the media. The

leaked information concerned the appointment of the Deputy Minister's daughter to a Deputy Director: Investigation post in the Free State, where Kgamanyane was the Provincial Head. Ms Netsianda advised against the appointment of the Deputy Minister's daughter. The documentation and her written notes ended up in a City Press report. The Public Service Commission ("**PSC**") later found that the Deputy Minister's daughter did not have the experience required for the post. Netsianda was also charged for conducting herself in a disgraceful manner by raising her voice during the Audit Committee meeting, where the funding of the IPID's case challenging Nhleko's interference with the IPID's independence was discussed. The disciplinary case against Netsianda was driven by the chairperson of the Audit Committee. **See Annexure A12.**

29. Netsianda's position was advertised in May 2016 and Molefe Matsomela ("**Matsomela**") was subsequently appointed on a six-month contract. Matsomela's security screening was done before the post was advertised, clearly indicating that advertisement and interviews were just a formality – the post was earmarked for Matsomela. During his tenure, the so-called restructuring proceeded at full speed and some people were transferred to more than one position. Matsomela never came back to work upon my return to office and he resigned thereafter. Since Matsomela's appointment was irregular, the IPID has instituted a process to recover the fruitless expenditure relating thereto in the amount of R450 456.44.

30. The reputations of the affected officials were ruined. Kgamanayane even issued a directive for IPID staff not to talk to the suspended and transferred officials. Due to the fact that there were no grounds for the transfers, three officials, Antonett Mphago (“Mphago”), Viceroy Maoka (“Maoka”) and Moses Dlamini (“Dlamini”), lodged a dispute at the General Public Service Sectoral Bargaining Council (“GPSSBC”) for their unfair transfers and a case of unlawful transfer in the Labour Court. The three were transferred for 8 months at great cost to the IPID just to punish them for having worked with me. The total cost of the transfers is in excess of R1 million, including the arbitration award which they won at the GPSSBC.
31. Pule Hillary Viceroy Maoka (“Maoka”) is the Director: Litigation Services. He made an affidavit for my Constitutional Court case. Maoka lodged a complaint regarding the conduct of Adv. Baloyi of NPA in the rendition prosecution. Mr Maoka was precautionary transferred to Limpopo on 1 September 2015 on allegations of leaking information to the media. Maoka was transferred at the same time as Antonett Mphago (to Gauteng) and Moses Dlamini (to KwaZulu-Natal). He was never charged with leaking information but was charged with the cancellation of bookings and failure to inform his supervisor and failure to report sick leave to the supervisor. Maoka was re-instated by the Labour Court on 29 April 2016, returning to his office on 06 May 2016. He was suspended on 12 May 2016 for 'providing legal assistance to his colleagues and for failure to make financial disclosure'. **See Annexure A13.**

32. Moses Dlamini (“**Dlamini**”) is the National Spokesman who was suspended on 20 June 2016. He made an affidavit in my Constitutional Court case. Dlamini was precautionary transferred to KwaZulu-Natal on 1 September 2015 on allegations of leaking information to the media. Dlamini was transferred at the same time as Antonette Mphago (to Gauteng) and Viceroy Maoka (to Limpopo). He was never charged with leaking information but was charged with the cancellation of bookings and failure to report sick leave to the supervisor timeously. Dlamini was re-instated by the Labour Court on 29 April 2016, returning to his office on 06 May 2016. He was suspended on 20 June 2016 for speaking to suspended officials (Maoka and McBride) against the directive of Kgamanyane, as well as allegations of sending disparaging emails about officials to IPID staff. Kgamanyane had issued a directive that IPID staff should not communicate with transferred and suspended officials. Dlamini was served with a letter of intent to permanently transfer him to Eastern Cape within 3 days of returning to the office. After objecting, he was transferred to the post of Director: Investigations at National Office effective 1 July 2016 as part of the “restructuring” After he objected to the transfer, he was suspended. **See Annexure A13.**
33. Dlamini's disciplinary hearing was presided over by the Limpopo Director of Public Prosecutions, Advocate Ivy Thenga (“**Thenga**”) to whom IPID makes referrals of cases investigated by it – a clear conflict of interest. Thenga said that she had been instructed to finalise the hearing over the weekend. Dlamini was reinstated upon my return to office.

34. Antonett Mphago (“Mphago”) is the Director: Executive Support in the office of the Executive Director. She was precautionary transferred to Gauteng on allegations of leaking information to the media. The said information related to the appointment of the daughter of the Deputy Minister of Police's daughter to a post of Deputy Director: Investigations in the Free State. She was transferred to Gauteng provincial office to the position of Deputy Director: Corporate Services position pending finalisation of investigations. She was never charged with leaking of information nor notified of the outcome of the investigation. On 1 December 2015, Mphago's transfer was uplifted after she had written to Kgamanyane informing him that 60 days had elapsed since her transfer and that no charges had been brought against her. She was denied access to her office and had to squat in the passage. On 30 June 2016 she was transferred to a position of Director: Compliance Monitoring, as a result of 'restructuring'. Mphago was under investigation on allegations of meeting/talking to with me on my visit to the national office on 9 June 2016. **See Annexure A13.**

## **Restructuring**

35. It is clear that Kgamanyane subscribed to the view that “If it works – break it!”, as there is no other way to comprehend the rationale behind the restructuring that went on during his tenure. He was like a mad scientist, transferring people to positions for which that had no competencies or experience. Some people even had to seek medical attention as a result of the senseless restructuring.
36. Vinesh Boodhoo (**“Boodhoo”**) was the Director: Investigation in Gauteng. He was

appointed by Ntshangase with two other people, who were forced out of IPID due to their association with Ms Ntshangase. Dan Morema (“Morema”) was appointed to act in Ntshangase's position, while she was on suspension. Morema victimised Boodhoo, as a result, he lodged a complaint against Morema. Boodhoo received correspondence informing him that the outcome of the investigation of his complaint was that he should be transferred out of Gauteng. Boodhoo was permanently transferred to the post of Director: Investigations in the Eastern Cape effective 1 July 2016 as a result of “restructuring”.

37. Marianne Moroasui (**“Moroasui”**) is the Chief Director: Legal Services. In March 2016 Kgamanyane had the Provincial Head of Kimberly and the then Deputy Provincial Head of the Western Cape take over the running of Legal Services whilst she was in the office. During the purported restructuring of the IPID, she was informed that she would be transferred to a position of Provincial Head in either Mpumalanga or Kimberley. She resisted the move and referred the matter to the PSA. Whilst still in consultation with the Kgamanyane, he made the decision to finally transfer her to Kimberley as Provincial Head. She was instructed to commence in Kimberley on 1 July 2016. She did not comply with the instruction and continued reporting to the National Office and one day she went out to lunch and upon her return her “biometric access” was deactivated and she could not access the National Office. Moroasui was informed by Matsomela, who was at the time acting as the head of Corporate Services that she had to report to Kimberly. Her Colleagues had to bring her handbag,

work bag and other personal belongings to her on the street as she was refused access, even to the National Office parking.

38. Zuziwe Cele (**“Cele”**) is the Deputy Director: Supply Chain Management. She was permanently transferred to Deputy Director: Corporate Services in Gauteng Province effective 1 August 2016 as a result of restructuring. She was seen to be a stumbling block to procurement.
39. Lindokuhle Ngcongco (**“Ngcongco”**) was the Chief Financial Officer (“CFO”) was transferred to Gauteng as the Provincial Head to head investigations. She was perceived to be a stumbling block to Kgamanyane’s plans for procurement. She was also opposed to the IPID paying for legal costs incurred by the Minister of Police (Nhleko). She has since left the IPID.
40. Mamodishe Molope (**“Molope”**) is the Chief Director: Compliance Monitoring and Compliance Management. She was transferred to Mpumalanga as Provincial Head to lead investigations, as part of restructuring.
41. Quite a number of other junior people were also transferred from their positions as a result of “restructuring” initiated by Kgamanyane with the approval of former Minister of Police, Nkosinathi Nhleko.

## **Return to office**

42. I returned to office on 19 October 2016 and requested Kgamanyane for a handover report. He was quite petulant and refused to give me such a report. He never returned to work and was irregularly transferred by Nhleko to the DPCI. He was accepted by former Hawks Head, Mthandazo Ntlemeza and appointed to the DPCI structure in the Free State. I had no say in Kgamanyane's transfer, which was done by Nhleko and Ntlemeza without any consultation. There is no greater example of interference in the operations of the IPID by a minister who had been found to have acted unlawfully and unconstitutionally by the Constitutional Court. To make matters worse, Kgamanyane was facing disciplinary action for the havoc he had caused at IPID. I wrote to Ntlemeza about my concerns. See **Annexure A14**.

43. Nhleko had awarded Kgamanyane a performance bonus which was clearly a gratification. He was the only one in IPID to be awarded a performance bonus.

## **Infiltration of IPID by Crime Intelligence**

44. I also found that IPID had been infiltrated by Crime Intelligence in the form of Tlou Kgomo ("Kgomo") and Emily Motsugi ("**Motsugi**"). Kgomo had been appointed as Director: Investigations. He was appointed to act as head of investigations in Sesoko's position. The two beat a hasty retreat back to Crime Intelligence soon after my return to office. My



next encounter with Kgomo was in Parliament where he was part of Phahlane's team to counter IPID's investigations. Kgomo would later approach IPID investigators, Mandla Mahlangu (**"Mahlangu"**) and Cedrick Nkabinde (**"Nkabinde"**), to offer them Brigadier positions to induce them to make false statements to implicate IPID managers in wrongdoing. In a recording made by one of the investigators, Kgomo can be heard making such an offer to Mahlangu. He confirms to Mahlangu that he is working with the North West team led by Major General Jan Mabula (**"Mabula"**) investigating a concocted case that would bring me "down", along with other IPID investigators and torpedo the investigation against Phahlane. Kgomo also took Mahlangu to Potchefstroom to meet Mabula. **See Annexure A15 (there's also a recording).**

45. Upon my return from my suspension on 19 October 2016 I was alerted of irregularities on how investigations had been conducted during the time when I was on suspension. There were allegations that certain cases that were being investigated by the IPID had been pre-maturely closed without carrying out proper investigation processes as contained in the Standard Operating Procedures. This was done in certain instances to push the statistics and other acts that amounted to defeating the ends of justice. These cases were termed "special closures". This was intended to manipulate statistics to give an impression that performance had been better under Kgamanyane. I instructed our Integrity Strengthening Unit to investigate these allegations. The Auditor-General also flagged some of these cases. One employee has already been dismissed as a result of this investigation. Another senior employee, Dan Morema, resigned when he was approached to make a statement. **See Annexure A16.**

## **Investigation into Phahlane**

46. Soon after my arrival I received a complaint from Paul O'Sullivan ("**O'Sullivan**"). The complaint was about a case of corruption and money laundering that had been opened against the then Acting National Commissioner of Police, General Phahlane. This case was first reported to the IPID before my arrival.
47. O'Sullivan had brought the case to the attention of Mr Kgamanyane, the Acting Executive Director, in March 2016 while I was on suspension. The complaint brought by O'Sullivan was that the case had not been investigated and he requested me to intervene and ensure that matter was investigated. One of the strange things that I found upon my return was that two cases had been opened, one as a duplicate of the other and vice versa – and both were then closed as duplicates of each other.
48. At the end of November 2016, a Task Team was formed that was to investigate the cases of corruption and money laundering that were levelled against General Phahlane. The Task Team comprised of Mandla Mahlangu, Temane Binang, Mantsha Raphesu and Cedrick Nkabinde.
49. The case to be investigated had to do with the construction of Phahlane's house at Sable Hills Estate allegedly with funds that were provided by a service provider to the SAPS. There was also the case of a music system worth R80 000 that was alleged to have been paid from the account of a service provider to the SAPS. Further there was a case of

vehicles in Phahlane's possession that, according to him, were either purchased and owned by him or sponsored for his use. The IPID investigated all cases and there was clear evidence of a corrupt relationship between Phahlane and service providers to the SAPS.

50. During January 2017 a search warrant was executed at the Sable Hills home of Phahlane. The purpose of the search was to identify the music system that was bought and paid for by a SAPS service provider. Present at the search was the person who had installed the music system, this was for purposes of identifying that the music system in Phahlane's house was the same music system that had been purchased by funds from a SAPS service provider and that he had installed in Phahlane's house.

51. After the search warrant was executed at Phahlane's house, he initiated a civil suit challenging the lawfulness of the search warrant.

52. The parties have exchanged papers in this matter and it was dormant since the latter part of 2017. Recently one of the original Task Team members, Cedrick Nkabinde, who was approached by Kgomo as mentioned in preceding paragraphs, deposed a supporting affidavit for Phahlane whilst he was undergoing a disciplinary process for several acts of misconduct. Nkabinde resigned with immediate effect on 19 October 2018, and his disciplinary hearing did not proceed.

### 53. Counter-investigation

54. I want to pause here and go back to when the initial investigation into the case of corruption and money laundering were initiated against Phahlane. O'Sullivan was the complainant and also because of his background in the matter he accompanied IPID investigators to the Sable Hills Estate to point out several witnesses to the case that the IPID was investigating. On some of the occasions he accompanied the IPID investigators together with his associate and attorney Sarah-Jane Trent.

55. As a result of the on-going investigations by the IPID with the assistance of O'Sullivan and Trent, Phahlane used his powers as the Acting National Commissioner to set up a team from the North West (Mabula Team) to start a counter-investigation on the IPID investigation against himself.

56. This SAPS counter-investigation was authorised under the guise of a security breach against the Acting National Commissioner. The North West Provincial Commissioner together with the Mabula Team concocted a report that was utilised to authorise their travel to Gauteng to investigate the purported security breach. Crime Intelligence ("CI") had earlier done an investigation of the alleged security breach and it found that there was in fact no security breach. The officers who did the investigation made statements to this effect. As a result of the concocted report, General Makhele was charged with defeating the ends of justice. This case is still with the NPA.

57. The Mabula Team then proceeded to counter the investigation of the IPID by approaching all the witnesses in the IPID investigation to get them to change their initial version against Phahlane and the SAPS service providers and their involvement in the construction of Phahlane's house and the cars.
58. Their counter-investigation resulted in a case being opened, Kameelfdrift 12/01/2017, against O'Sullivan and his associate Trent. The charges against them were, amongst others of impersonating IPID officials in terms of section 33(5) of the IPID Act, these were clearly trumped up charges. The charges were that they had visited Phahlane's Sable Hills home together with IPID investigators and that during the said visit they had impersonated IPID investigators.
59. During Trent's arrest her mobile phone was unlawfully confiscated and booked in for investigation in order to try and support the charges that were being fabricated against the pair and later on the IPID investigators that were added.
60. O'Sullivan and Trent made a number of appearances in the Pretoria Magistrate Court, in the case emanating from the Kameelfdrift case and around May 2017. Brigadier Ncube, one of the members of the Mabula Team made contact with two of the IPID investigators. He informed them that he was the investigator in the Kameelfdrift 12/01/2017 case and that he intended on adding them as co-accused in the case already before the Pretoria Magistrate Court.

61. Trent's phone was stolen by the Mabula Team and taken to Israel to be downloaded. The contents were leaked to the Sunday Times in a bid to falsely implicate myself and my investigators in wrongdoing to protect Phahlane.

62. There was a litany of charges that were brought against Mahlangu and Binang who were members of the IPID Task Team, at the top of the list were charges of contravening section 33(5) and section 33(2) of the IPID Act. The two investigators were added in State versus Sarah-Jane Trent and three others, which was held the Pretoria Magistrate Court. When Ncube had earlier come to IPID to obtain the statements of Mahlangu and Binang, I asked him why he was in Gauteng as he was based in the North West, he opened a case of intimidation against me.

63. The State Advocate in the matter was a Molatlhwa Mashuga ("**Mashuga**"), who also has some links to the NW SAPS team. The case was remanded on numerous times at the behest of the State, apparently for further investigations. After the numerous postponements for further investigations by Mashuga, the defence in October 2017, i.e IPID made an application that the matter be struck off the roll in terms of section 342A(3)(c) of the Criminal Procedure Act, No 51 of 1977, which deals with unreasonable delays in a matter before a court "

*"(3) If the court finds that the completion of the proceedings is being delayed unreasonably, the court may issue any such order as it deems fit in order to*

*eliminate the delay and any prejudice arising from it or to prevent further delay or prejudice, including an order-*

(a) ...;

(b) ...;

(c) *where the accused has not yet pleaded to the charge, that the case be struck off the roll and the prosecution not be resumed or instituted de novo without the written instruction of the attorney-general;”*

64. The Magistrate made an order that the matter be struck off the roll in terms of the above-mentioned section. The matter could only be re-enrolled with the written instruction of the NDPP, Shaun Abrahams at the time. This order by the Magistrate was made In October 2017.

65. It's important to indicate that neither the order by the Magistrate made in terms of section 342A(3)(c) of the Criminal Procedure Act nor the Prinsloo J Order, made in November 2017, stopped the Mabula Team from continuing with their counter investigation. This was clear when immediately after both orders Ncube took another warning statement, this time against Mantsha Raphesu and threatened to arrest the other members of the Task Team including myself, but despite all the threats the fabricated case is yet to be re-enrolled, further proving that the charges are baseless and are trumped up.

## **Interdict and main application wrt the counter-investigation (Court order in favour of the IPID)**

66. With the on-going counter-investigation by the Mabula Team, it was clear that the intention was to scupper the IPID investigation and the IPID brought an urgent application before the North Gauteng High Court in order to stop the counter-investigation and also to seek a declaratory that members of the SAPS that were themselves subjects of an investigation by the IPID should not investigate or oversee an investigation against members of the IPID.

67. An urgent interdict was sought against the Phahlane, at the time, the North West Provincial Commissioner, Mabula and Ncube. Later, in the main application, the other members of the Mabula Team were added as respondents as they were conducting this counter-investigation against members of the IPID.

68. Throughout the exchange of papers in this matter, the Mabula Team insisted that the cases that the IPID stated they were investigating against them were “cold cases”. This was proven to be false as a list was annexed in the papers to show the status of the cases against the members of the Mabula Team. It is, in any event, disingenuous for Mabula to say as the evidence shows that the only reason the cases had not progressed was due to them being suppressed. There is a **recording** in which one of the suspects admits to torturing the deceased in the Makau case and he implicates Mabula. See **Recording 3**



69. An agreement was reached by the parties and it was made the order of the court by Prinsloo J. At the time the order was made, Phahlane had been suspended as the Acting National Commissioner and General Mothiba had been appointed to act. Prior to the Prinsloo J order that was made on 28 November 2017, Mothiba had also been engaged on countless occasions to try and resolve the matter outside of the courts.

70. Prior the making of the Prinsloo J order, there had been countless engagements with the different senior management within SAPS in a bid to avoid litigation and come to an amicable solution to the number of civil suits that were in the courts. The Portfolio Committee on Police also tried to intervene by requesting an appearance and briefing by Phahlane, whilst he was still acting National Commissioner, and his team and the Executive Director and his team in order to try and resolve the battle that was playing out between the two departments.

71. All of the engagements and attempts to amicably resolve the impasse between the two sister departments did not assist and this culminated in the Prinsloo J interim order that was agreed upon by the parties. It was further agreed that the main application where a declaratory was sought would be heard at a later stage and would ensure that the issue of the counter-investigation would be finalised.

72. Despite the order that was made, the IPID became aware after the Mabula Team were continuing with the counter-investigation against the IPID, in the form of the investigators and myself.

73. As a result the IPID continued to engage the SAPS, the ministry as well as the office of the NDPP, in trying to ascertain whether the continuing investigation was sanctioned at a senior level.

74. There were also meetings held with General Sitole and Minister Cele, after their appointments to their respective offices, in order to bring them up to speed with these matters and also with a hope that the Minister would intervene.

75. Despite all the above efforts on the part of the IPID, as can be seen from the numerous letters to the various stakeholders, the National Commissioner only indicated that he would abide by the order of the court. The Minister on the other hand was unrepresented when the matter was argued for a final order on 21 June 2018. **See Annexure L.**

76. The matter was set down for argument before Judge Tuchten on 21 and 22 June 2018. , From the outset Phahlane agreed that he would agree to not take part or to oversee any investigation that was carried out by the members of the Mabula Team and that was also made part of the Tuchten Order that was made on 26 June 2018.

77. An important point to note is that, the National Commissioner of the SAPS, Sitole prior to the proceedings had entered a notice to abide by the order of the court and this was done in his official capacity.

78. The interpretation of this notice to abide coming from the National Commissioner's office led to the question that if the Commissioner abides by the prayers of the IPID, what locus standi did the members of the Mabula Team have to continue with an investigation that did not seem to be sanctioned by the Head of the SAPS?

79. There were arguments for both sides and at the last minute the Deputy National Commissioner, General Mfazi, gave a written undertaking that the members of the Mabula Team would no longer be involved in any "revenge-investigations" against members of the IPID that were investigating them.

80. The term "revenge-investigation" was made by Judge Tuchten in his judgment on 26 June 2018. The order was in effect drafted around section 25 of the IPID Act, which speaks to instances where an investigator has a conflict of interest in any investigation that he carries out that he would have to declare such interest. The SAPS Act does not have a similar clause that dealt with conflicts of interest. The Judge in this matter added that such members of the SAPS should also be precluded from overseeing such investigation.

81. Further the above gap in the SAPS legislation would be temporarily resolved by the Tuchten Judgment until such a time that there were appropriate regulations or standing orders or national legislation dealing with this gap.

### **Court order regarding search and seizure by Phahlane on vehicle investigation**

82. During the investigation into the Phahlane vehicle case, which he claimed he owned and others were sponsored, the IPID learnt that there were several SAPS service providers that Phahlane was conducting acts of criminality with. Amongst the service providers were Durandt Snyman, Keith Keating, the proprietor of FDA and others. The relationship between these parties was unravelled and IPID together with members of the DPCI conducted search warrants on the properties of the above-mentioned service providers on 4 December 2017. **See Annexure A17.**

83. The lawfulness of the search warrants was challenged. The applicants raised technical challenges against the affidavit utilised to authorise the search warrant by the magistrate, also that the IPID officials are not police officials and therefore cannot execute a search warrant in terms of the Criminal Procedure Act and other technicalities.

84. The matter was set down and heard on 18 June 2018 and the judgement was delivered on 3 August 2018 by Judge Kollapen. This judgment dealt thoroughly with all the technical points raised by the applicants. **See Annexure N.**

85. The applicants later brought an application for leave to appeal and it was dismissed. We have been advised by IPID's attorneys that the applicants are petitioning the Supreme Court of Appeal.

## **NPA bias**

86. The NPA under the leadership of Advocate Shaun Abrahams (**“Abrahams”**), working with Advocates Sibongile Mzinyathi (**“Mzinyathi”**), George Baloyi (**“Baloyi”**), Sello Maema (**“Maema”**), Molatlhwa Mashuga (**“Mashuga”**), Raymond Mathenjwa (**“Mathenjwa”**) has lost all credibility. I am of the belief that these advocates are a core group that has been at the forefront of enabling the capture of the criminal justice cluster through the persecution of corruption fighters. They were also involved in the protection of criminal suspects by declining to prosecute suspects investigated by the IPID in cases where their subordinates who are experienced prosecutors had recommended prosecution based on abundant evidence but the advocates would override those decisions.

87. I wrote to Abrahams on numerous occasions requesting that he review Mzinyathi's and Baloyi's decisions to undermine the decisions of Senior Public Prosecutors. Abrahams simply agreed with Mzinyathi's and Baloyi's actions. **See Annexure A18.**

88. I expressed my concern that Advocate Sello Maema (**“Maema”**) had been allowed to prosecute us as in my view his actions to prosecute us without a shred of evidence involves dishonesty and a lack of integrity.

89. Mashuga was behind the prosecution of IPID investigators and O'Sullivan, against a court order, on fabricated charges to torpedo the IPID's investigation into Phahlane.

### **The role of Hogan Lovells**

90. Hogan Lovells allowed itself to be used to hollow out public institutions, especially the IPID and the DPCI. This firm was used to get rid of people in the IPID, the DPCI. Common figures in the tainted disciplinary processes with fabricated charges include Advocate William Mokhari (“**Mokhari**”) and Advocate Mxolisi Zondo (“**Zondo**”). In IPID, Sesoko was dismissed after submitting a sick note, without even being allowed to present his case by Zondo with Mokgatle and Mokhari presiding over a sham disciplinary hearing. A similar thing had happened to Sibiya at the DPCI. The same team, except for the presiding officer, were involved in Khuba’s disciplinary hearing – the result was that Khuba was dismissed for failing to implicate me in wrongdoing.

### **Crimes against the State (CATS) unit**

91. Myself, Sesoko and Khuba were investigated by the DPCI’s Crimes Against the State (Cats) unit for fraud and defeating the ends of justice. The charges were dropped as there was never any shred of evidence. This unit was used to pursue a political agenda and to target individuals within the criminal justice cluster who stood up against state capture. It is headed by Brigadier Nyameka Xaba who reported to Ntlemeza. The same unit investigated other fabricated cases against Minister Pravin Gordhan, the so-called Rogue Unit and seems to have taken instructions or worked with SARS Commissioner Tom Moyane (“**Moyane**”). This can be seen from the incident involving SARS Legal Advisor Vlok Symington, who was prevented from leaving a boardroom until he handed back a document on the instructions of Moyane.

### **Leon Mbangwa – Nhleko’s Chief of Staff**

92. Leon / Lionel Mbangwa was employed by Nhleko as his Chief of Staff. The problem with his appointment is that he is a convicted criminal and illegal immigrant with no South African Identity Book/Card. He was convicted and sentenced to four years imprisonment for using a fraudulent ID. His security screening was processed through the IPID by Kgamanyane to avoid detection were it to be done through the SSA. This begs the question: Why would government minister want an illegal immigrant as his Chief of Staff?

**See Annexure A19.**

### **Reference group**

93. In October 2014, the Minister of Police, Nkosinathi Nhleko established a reference group to “...deal with issues of human resources, suspensions... the state of crime intelligence, administrative queries and perception of SAPS.” At the time, the Minister said the ministry would use the work done by the reference group to “...turnaround the image of the police and build public confidence in the service.” Surprisingly the reference group was comprised of public officials such as Adv Raymond Mathenjwa (“**Mathenjwa**”) from the NPA. Mathenjwa would later aggressively demand the docket into the renditions investigation – which was clearly beyond the scope of the reference group announced by Nhleko. Further, this was an undesirable situation as Mathenjwa was a senior prosecutor who was involved in deciding other matters referred to the NPA by the IPID. At the time, the IPID had already referred the docket to the National Director of Public Prosecutions for a decision on prosecution. That neither Mathenjwa nor the minister saw the clear conflict of interest which could compromise the IPID’s independence suggests that there

was some ulterior purpose to the establishment of the reference group.

### **Portfolio Committee on Police**

94. During the period of my suspension, IPID staff who were under attack by Kgamanyane directed correspondence to the Portfolio Committee on Police (“PCP”) – no response was ever received. I also wrote to the chairperson of the same committee alerting him to what was going on. I never received a response from him. **See Annexure A20.**



## **ZONDO COMMISSION OF INQUIRY**

Version 7 – 11 February 2019

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### **STATEMENT TO ZONDO COMMISSION OF INQUIRY BY ROBERT JOHN McBRIDE**

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#### **Legislative mandate**

1. The Independent Police Investigative Directorate is an independent body established by the Independent Police Investigative Directorate Act No. 1 of 2011, whose objects are set out in Section 2 thereof which, *inter alia* provides that the Independent Police Investigative Directorate ("IPID") should give effect to the provisions of Section 206(6) of the Constitution of RSA i.e. to establish an independent police complaints body established by national legislation in order to investigate alleged misconduct of, or any offence committed by a member of the Police Services in any province as well as further to ensure independent oversight of the South African Police and Municipal Police Services. There are further objectives to the Act.
2. The independence and impartiality of the Directorate is entrenched in terms of Section 4 of the IPID Act, which specifically states that the Directorate i.e. IPID functions independently from the South African Police Service.
3. Section 7(4) of the IPID Act provides that:

*“The Executive Director must refer criminal offences revealed as a result of an investigation to the National Prosecuting Authority for criminal prosecution and notify the Minister of such referral.” See Annexure A1*

4. The regulations for the operation of IPID provide, *inter alia*, that an investigator of IPID, as part of his functions, after collecting all evidence, statements and technical expert reports, if applicable, must submit a report on the investigation of the offence to the Executive Director or the relevant Provincial Head, as the case may be, containing recommendations regarding further action, which may include disciplinary measures to be taken against a member of the South African Police Service or the Municipal Police Service or criminal prosecution of such member. **See Annexure A2.**
5. The Standard Operating Procedures of IPID effective as from the 1<sup>st</sup> April 2013 and in particular in Section 7.10 thereof provide a procedure for the completion and closing of files and dockets. **See Annexure A3.**

## **Appointment**

6. I was appointed the Executive Director of IPID on the 3<sup>rd</sup> March 2014, in terms of section 6 of the IPID Act. Upon my appointment, I asked to be briefed on all high profile cases. One of the cases I was briefed on was the so called “Rendition Case”. After the briefing it became clear to me that the investigation was not conducted independently and impartially in line with IPID Act. What followed is fully traversed in my founding affidavits and replying affidavits with annexures filed in the high court, labour court and the Constitutional court to challenge my unlawful suspension. See

attached affidavits marked **Annexures A4 to A6**. The Constitutional Court found the actions of the minister to be unlawful and unconstitutional and set them aside. **See Annexure A7.**

7. Before I was suspended, I had written to the Chairperson of the Portfolio Committee on Police, Mr Francois Beukman ("**Beukman**"), asking that I be allowed to clarify and account to the Portfolio Committee on media reports about "two contradicting reports". Mr Beukman rejected this offer, citing the sub-judice rule. This was a concern to me given the fact that the doctrine of separation of powers compels him to hold the Executive and IPID to account. It is noteworthy that some members of the Portfolio Committee on Police held a meeting with the then Minister of Police, Nkosinathi Nhleko ("**Nhleko**") where my removal from office and that of then DPCI Head, Anwa Dramat ("**Dramat**") were discussed. The next day, Nhleko, made a presentation to the same portfolio committee to start a process to remove Dramat. **See Annexure A8.**
8. I pause to reflect on the events that preceded the Werksmans report which was used by Nhleko to legitimise his unlawful actions and the complicity of Sandile July ("**July**"), who compiled the said report. After Nhleko appointed Werksmans to investigate the "two reports" which he falsely alleged he had been given by the IPID, several attempts were made by July to interview IPID National Head of Investigations, Matthews Sesoko ("**Sesoko**") and IPID Lead Investigator, Innocent Khuba ("**Khuba**"). Sesoko was contacted by July and Sesoko indicated his willingness to cooperate but asked that the request be sent via email and be directed to me – he also provided the

relevant email addresses. Interestingly, when the email was sent, Khuba's and Sesoko's email addresses were typed correctly but mine was not. The email meant for me was sent to [rmcbride@ipid.co.za](mailto:rmcbride@ipid.co.za) instead of [rmcbride@ipid.gov.za](mailto:rmcbride@ipid.gov.za). Sesoko picked up on what he thought had been an error and alerted Werksmans. The next time they sent the email to [rmcbrde@ipid.gov.za](mailto:rmcbrde@ipid.gov.za) (leaving out the "i" in mcbride). One is left with no other conclusion than that Werksmans was in cahoots with Nhleko to conduct a sham investigation that would enable Nhleko to get rid of myself and Dramat by hook or crook.

9. Furthermore, Khuba reported having received multiple calls from Nhleko's Personal Assistant, Amelia Monaheng asking him to meet with Nhleko, who was so desperate to get Khuba to falsely implicate me in wrongdoing that Nhleko himself called Khuba promising him that the Ministry would cover his travelling costs to Cape Town on a weekend so that I would not find out about it. These were the actions of a government minister who was willing to use any means, including lies and deceit to capture the criminal justice system. Nhleko would later go to Parliament to perpetuate the same lies with the collusion of some members of Parliament.

### **Werksmans report**

10. Mr Israel Kgamanyane ("Kgamanyane"), who was the IPID's Free State Provincial Head at the time, was appointed to act as Executive Director.
11. After his appointment, Kgamanyane instructed Sesoko and Khuba to attend

interviews at Werksmans. Thereafter the discredited Werksmans report was leaked to the Sunday Times (Stephan Hofstatter and Mzilikazi wa Afrika) and the Sunday Independent (Solly Maphumulo). The Sunday Times and Sunday Independent ran a series of false stories to prop up Nhleko's false narrative.

12. The Werksmans report was the sole evidence against me, Khuba and Sesoko. A critique of the dodgy Werksmans report was filed with my papers when I challenged my unlawful suspension in the High Court. **See Annexure A4 to A6.** It should be noted that the author of this dodgy report, Advocate Sandile July, was later quoted by Maema in court as having as threatened to challenge his subpoena in the High Court on the basis that his report was hearsay and he could not stand by it in a court of law. So this report, which cost the taxpayers over R1,3 million was used to get rid of me, Khuba and Sesoko, was not worth the paper it was written on. **See Annexure A9.**
13. Bizarrely, Nhleko later tried to get the IPID to pay R9 million in legal costs incurred by him in his unlawful and unconstitutional attempt to remove me as IPID Executive Director.
14. On 21 May 2015, Khuba and Sesoko were suspended by Kgamanyane on the instructions of the Minister for allegedly altering the IPID's Progress Report into the Rendition Investigation, dated 22 January 2015 ("**the first report**") with myself. However, it should be noted that I did not even know about the existence of the report

that was supposedly altered as it predated my appointment as IPID Executive Director.

15. During the eighteen (18) months of my suspension, I heard about Kgamanyane wreaking havoc in the IPID by initially suspending and transferring at least eight (8) senior managers for no other reason than that they worked with me or that they deposed affidavits about information which was within their knowledge as IPID employees.
16. At the time of my return to the IPID, on 19 October 2016, the Constitutional Court had confirmed the High Court decision to declare my suspension unlawful and set it aside, I became aware that more people had been displaced at IPID under the so-called “restructuring”.

### **Suspensions, transfers and dismissals**

17. I now deal with the suspensions and transfers that occurred immediately following my suspension.
18. Matthews Sesoko (“Sesoko”) was the Chief Director: Investigations and Information Management. He is the National Head of Investigations. He made an affidavit in my application to challenge the constitutionality of section 6(3) and 6(6). He was suspended on 21 May 2015. He was charged with altering the report into Zimbabwe renditions investigation. As soon as Kgamanyane was appointed as Acting Executive

Director, he asked for the Panday case which was under investigation by the IPID. To date, this case is not on the court roll. Kgamanyane also went to Limpopo and the North West and collected dockets in which former DPCI Head, Mthandazo Berning Ntlemeza and Major-General Jan Mabula were suspects.

19. Sesoko was subsequently unlawfully dismissed by Advocate Mxolisi Zondo (“**Zondo**”), who presided over General Sibiya’s disciplinary hearing, without having presented his case. He had requested a postponement owing to illness but Zondo rejected his medical certificate and dismissed him in absentia. In his written ruling, Zondo concedes that it would have been fair to hear Sesoko’s version of events but bizarrely dismisses him with immediate effect, without allowing him to state his defence, because the medical certificate submitted by Sesoko’s counsel was from a general practitioner and not from a specialist. Furthermore, Sesoko’s dismissal was on the basis of hearsay evidence of a single witness. **See Annexure A10.**
20. Sesoko was also criminally charged with Khuba and me for fraud and defeating the ends of justice. The criminal charges were withdrawn on 01 November 2016. Upon my return to office in 2016, a settlement was reached with Sesoko’s attorneys to reinstate him to his former position.
21. Upon my return to office, I discovered that there were allegations that of the manipulation of cases to artificially inflate the performance of the IPID in my absence. Kgamanyane even went to Parliament and reported that performance was much better in the absence of the suspended and transferred, however, this was a blatant lie which was told to make himself look good. Nhleko awarded him a bonus for good

performance.

22. Innocent Khuba ("Khuba") is the Provincial Head: Limpopo. Khuba was the lead investigator into allegations that some Zimbabweans were unlawfully handed over to Zimbabwean police, resulting in them being killed. He was suspended on 21 May 2015 on allegations of altering the investigation report into Zimbabwe 'renditions' with myself and Sesoko. During his suspension, he was told that he was suspended on the Minister's instructions. Khuba made an affidavit for my Constitutional Court case.
23. Prior to his dismissal, Khuba was approached by Werksmans, the Minister's PA and the Minister himself wanting to interview him and get him to implicate me. When he failed to implicate myself and Sesoko, disciplinary charges were brought against him. After six months of suspension, Khuba reached a plea bargain deal and was given a final written warning. Within a week, Khuba was summarily dismissed after he refused to falsely implicate me and Sesoko. Upon his refusal, he was dismissed with immediate effect.
24. Well before my appointment as IPID Executive Director, Ntlemeza himself had told Khuba while he was doing the rendition investigation that it was the only thing holding up his move to the DPCI after a 'hit on Dramat'. **See Annexure A11.**



25. After Khuba was dismissed, he was approached by officers from the Hawks and promised his job back if only he made a false statement saying I had forced him to change the rendition report. Khuba recorded this approach by a Colonel Mahlangu, who is heard imploring Khuba to make a false statement to empower Ntlemeza. In the recording, Colonel Mahlangu further says Khuba would be restored to his position if he made such a statement. **See Recording 1.**
26. Khuba has since been restored to his position through an order of the Labour Court. Furthermore, the criminal charges against Khuba, Sesoko and myself were withdrawn on 01 November 2016.
27. Felicia Ntshangase (“**Ntshangase**”) is the Gauteng Provincial Head who was suspended on 8 July 2015 by Kgamanyane. Five days after my suspension, Nhleko addressed IPID management and made disparaging remarks about the judiciary. Ntshangase made an affidavit regarding this. She was suspended on allegations of nepotism for recommending the appointments of 3 officials in her office. However, the decision to appoint said officials was made by Mr Kgamanyane. The Public Service Commission later cleared Ntshangase of wrongdoing and recommended action against Kgamanyane instead.
28. Nomkhosi Netsianda (“**Netsianda**”) is the head of corporate services. She was suspended on 19 August 2015 on allegations of leaking information to the media. The

leaked information concerned the appointment of the Deputy Minister's daughter to a Deputy Director: Investigation post in the Free State, where Kgamanyane was the Provincial Head. Ms Netsianda advised against the appointment of the Deputy Minister's daughter. The documentation and her written notes ended up in a City Press report. The Public Service Commission ("**PSC**") later found that the Deputy Minister's daughter did not have the experience required for the post. Netsianda was also charged for conducting herself in a disgraceful manner by raising her voice during the Audit Committee meeting, where the funding of the IPID's case challenging Nhleko's interference with the IPID's independence was discussed. The disciplinary case against Netsianda was driven by the chairperson of the Audit Committee. **See Annexure A12.**

29. Netsianda's position was advertised in May 2016 and Molefe Matsomela ("**Matsomela**") was subsequently appointed on a six-month contract. Matsomela's security screening was done before the post was advertised, clearly indicating that advertisement and interviews were just a formality – the post was earmarked for Matsomela. During his tenure, the so-called restructuring proceeded at full speed and some people were transferred to more than one position. Matsomela never came back to work upon my return to office and he resigned thereafter. Since Matsomela's appointment was irregular, the IPID has instituted a process to recover the fruitless expenditure relating thereto in the amount of R450 456.44.

30. The reputations of the affected officials were ruined. Kgamanayane even issued a directive for IPID staff not to talk to the suspended and transferred officials. Due to the fact that there were no grounds for the transfers, three officials, Antonett Mphago (“Mphago”), Viceroy Maoka (“Maoka”) and Moses Dlamini (“Dlamini”), lodged a dispute at the General Public Service Sectoral Bargaining Council (“GPSSBC”) for their unfair transfers and a case of unlawful transfer in the Labour Court. The three were transferred for 8 months at great cost to the IPID just to punish them for having worked with me. The total cost of the transfers is in excess of R1 million, including the arbitration award which they won at the GPSSBC.
31. Pule Hillary Viceroy Maoka (“Maoka”) is the Director: Litigation Services. He made an affidavit for my Constitutional Court case. Maoka lodged a complaint regarding the conduct of Adv. Baloyi of NPA in the rendition prosecution. Mr Maoka was precautionary transferred to Limpopo on 1 September 2015 on allegations of leaking information to the media. Maoka was transferred at the same time as Antonett Mphago (to Gauteng) and Moses Dlamini (to KwaZulu-Natal). He was never charged with leaking information but was charged with the cancellation of bookings and failure to inform his supervisor and failure to report sick leave to the supervisor. Maoka was re-instated by the Labour Court on 29 April 2016, returning to his office on 06 May 2016. He was suspended on 12 May 2016 for 'providing legal assistance to his colleagues and for failure to make financial disclosure'. **See Annexure A13.**

32. Moses Dlamini (“**Dlamini**”) is the National Spokesman who was suspended on 20 June 2016. He made an affidavit in my Constitutional Court case. Dlamini was precautionary transferred to KwaZulu-Natal on 1 September 2015 on allegations of leaking information to the media. Dlamini was transferred at the same time as Antonette Mphago (to Gauteng) and Viceroy Maoka (to Limpopo). He was never charged with leaking information but was charged with the cancellation of bookings and failure to report sick leave to the supervisor timeously. Dlamini was re-instated by the Labour Court on 29 April 2016, returning to his office on 06 May 2016. He was suspended on 20 June 2016 for speaking to suspended officials (Maoka and McBride) against the directive of Kgamanyane, as well as allegations of sending disparaging emails about officials to IPID staff. Kgamanyane had issued a directive that IPID staff should not communicate with transferred and suspended officials. Dlamini was served with a letter of intent to permanently transfer him to Eastern Cape within 3 days of returning to the office. After objecting, he was transferred to the post of Director: Investigations at National Office effective 1 July 2016 as part of the “restructuring” After he objected to the transfer, he was suspended. **See Annexure A13.**
33. Dlamini's disciplinary hearing was presided over by the Limpopo Director of Public Prosecutions, Advocate Ivy Thenga (“**Thenga**”) to whom IPID makes referrals of cases investigated by it – a clear conflict of interest. Thenga said that she had been instructed to finalise the hearing over the weekend. Dlamini was reinstated upon my return to office.

34. Antonett Mphago (“Mphago”) is the Director: Executive Support in the office of the Executive Director. She was precautionary transferred to Gauteng on allegations of leaking information to the media. The said information related to the appointment of the daughter of the Deputy Minister of Police's daughter to a post of Deputy Director: Investigations in the Free State. She was transferred to Gauteng provincial office to the position of Deputy Director: Corporate Services position pending finalisation of investigations. She was never charged with leaking of information nor notified of the outcome of the investigation. On 1 December 2015, Mphago's transfer was uplifted after she had written to Kgamanyane informing him that 60 days had elapsed since her transfer and that no charges had been brought against her. She was denied access to her office and had to squat in the passage. On 30 June 2016 she was transferred to a position of Director: Compliance Monitoring, as a result of 'restructuring'. Mphago was under investigation on allegations of meeting/talking to with me on my visit to the national office on 9 June 2016. **See Annexure A13.**

## **Restructuring**

35. It is clear that Kgamanyane subscribed to the view that “If it works – break it!”, as there is no other way to comprehend the rationale behind the restructuring that went on during his tenure. He was like a mad scientist, transferring people to positions for which that had no competencies or experience. Some people even had to seek medical attention as a result of the senseless restructuring.
36. Vinesh Boodhoo (**“Boodhoo”**) was the Director: Investigation in Gauteng. He was

appointed by Ntshangase with two other people, who were forced out of IPID due to their association with Ms Ntshangase. Dan Morema (“Morema”) was appointed to act in Ntshangase's position, while she was on suspension. Morema victimised Boodhoo, as a result, he lodged a complaint against Morema. Boodhoo received correspondence informing him that the outcome of the investigation of his complaint was that he should be transferred out of Gauteng. Boodhoo was permanently transferred to the post of Director: Investigations in the Eastern Cape effective 1 July 2016 as a result of “restructuring”.

37. Marianne Moroasui (**“Moroasui”**) is the Chief Director: Legal Services. In March 2016 Kgamanyane had the Provincial Head of Kimberly and the then Deputy Provincial Head of the Western Cape take over the running of Legal Services whilst she was in the office. During the purported restructuring of the IPID, she was informed that she would be transferred to a position of Provincial Head in either Mpumalanga or Kimberley. She resisted the move and referred the matter to the PSA. Whilst still in consultation with the Kgamanyane, he made the decision to finally transfer her to Kimberley as Provincial Head. She was instructed to commence in Kimberley on 1 July 2016. She did not comply with the instruction and continued reporting to the National Office and one day she went out to lunch and upon her return her “biometric access” was deactivated and she could not access the National Office. Moroasui was informed by Matsomela, who was at the time acting as the head of Corporate Services that she had to report to Kimberly. Her Colleagues had to bring her handbag,

work bag and other personal belongings to her on the street as she was refused access, even to the National Office parking.

38. Zuziwe Cele (**“Cele”**) is the Deputy Director: Supply Chain Management. She was permanently transferred to Deputy Director: Corporate Services in Gauteng Province effective 1 August 2016 as a result of restructuring. She was seen to be a stumbling block to procurement.
39. Lindokuhle Ngcongco (**“Ngcongco”**) was the Chief Financial Officer (“CFO”) was transferred to Gauteng as the Provincial Head to head investigations. She was perceived to be a stumbling block to Kgamanyane’s plans for procurement. She was also opposed to the IPID paying for legal costs incurred by the Minister of Police (Nhleko). She has since left the IPID.
40. Mamodishe Molope (**“Molope”**) is the Chief Director: Compliance Monitoring and Compliance Management. She was transferred to Mpumalanga as Provincial Head to lead investigations, as part of restructuring.
41. Quite a number of other junior people were also transferred from their positions as a result of “restructuring” initiated by Kgamanyane with the approval of former Minister of Police, Nkosinathi Nhleko.

## **Return to office**

42. I returned to office on 19 October 2016 and requested Kgamanyane for a handover report. He was quite petulant and refused to give me such a report. He never returned to work and was irregularly transferred by Nhleko to the DPCI. He was accepted by former Hawks Head, Mthandazo Ntlemeza and appointed to the DPCI structure in the Free State. I had no say in Kgamanyane's transfer, which was done by Nhleko and Ntlemeza without any consultation. There is no greater example of interference in the operations of the IPID by a minister who had been found to have acted unlawfully and unconstitutionally by the Constitutional Court. To make matters worse, Kgamanyane was facing disciplinary action for the havoc he had caused at IPID. I wrote to Ntlemeza about my concerns. See **Annexure A14**.

43. Nhleko had awarded Kgamanyane a performance bonus which was clearly a gratification. He was the only one in IPID to be awarded a performance bonus.

## **Infiltration of IPID by Crime Intelligence**

44. I also found that IPID had been infiltrated by Crime Intelligence in the form of Tlou Kgomo ("Kgomo") and Emily Motsugi ("**Motsugi**"). Kgomo had been appointed as Director: Investigations. He was appointed to act as head of investigations in Sesoko's position. The two beat a hasty retreat back to Crime Intelligence soon after my return to office. My



next encounter with Kgomo was in Parliament where he was part of Phahlane's team to counter IPID's investigations. Kgomo would later approach IPID investigators, Mandla Mahlangu (**"Mahlangu"**) and Cedrick Nkabinde (**"Nkabinde"**), to offer them Brigadier positions to induce them to make false statements to implicate IPID managers in wrongdoing. In a recording made by one of the investigators, Kgomo can be heard making such an offer to Mahlangu. He confirms to Mahlangu that he is working with the North West team led by Major General Jan Mabula (**"Mabula"**) investigating a concocted case that would bring me "down", along with other IPID investigators and torpedo the investigation against Phahlane. Kgomo also took Mahlangu to Potchefstroom to meet Mabula. **See Annexure A15 (there's also a recording).**

45. Upon my return from my suspension on 19 October 2016 I was alerted of irregularities on how investigations had been conducted during the time when I was on suspension. There were allegations that certain cases that were being investigated by the IPID had been pre-maturely closed without carrying out proper investigation processes as contained in the Standard Operating Procedures. This was done in certain instances to push the statistics and other acts that amounted to defeating the ends of justice. These cases were termed "special closures". This was intended to manipulate statistics to give an impression that performance had been better under Kgamanyane. I instructed our Integrity Strengthening Unit to investigate these allegations. The Auditor-General also flagged some of these cases. One employee has already been dismissed as a result of this investigation. Another senior employee, Dan Morema, resigned when he was approached to make a statement. **See Annexure A16.**

## **Investigation into Phahlane**

46. Soon after my arrival I received a complaint from Paul O'Sullivan ("**O'Sullivan**"). The complaint was about a case of corruption and money laundering that had been opened against the then Acting National Commissioner of Police, General Phahlane. This case was first reported to the IPID before my arrival.
47. O'Sullivan had brought the case to the attention of Mr Kgamanyane, the Acting Executive Director, in March 2016 while I was on suspension. The complaint brought by O'Sullivan was that the case had not been investigated and he requested me to intervene and ensure that matter was investigated. One of the strange things that I found upon my return was that two cases had been opened, one as a duplicate of the other and vice versa – and both were then closed as duplicates of each other.
48. At the end of November 2016, a Task Team was formed that was to investigate the cases of corruption and money laundering that were levelled against General Phahlane. The Task Team comprised of Mandla Mahlangu, Temane Binang, Mantsha Raphesu and Cedrick Nkabinde.
49. The case to be investigated had to do with the construction of Phahlane's house at Sable Hills Estate allegedly with funds that were provided by a service provider to the SAPS. There was also the case of a music system worth R80 000 that was alleged to have been paid from the account of a service provider to the SAPS. Further there was a case of

vehicles in Phahlane's possession that, according to him, were either purchased and owned by him or sponsored for his use. The IPID investigated all cases and there was clear evidence of a corrupt relationship between Phahlane and service providers to the SAPS.

50. During January 2017 a search warrant was executed at the Sable Hills home of Phahlane. The purpose of the search was to identify the music system that was bought and paid for by a SAPS service provider. Present at the search was the person who had installed the music system, this was for purposes of identifying that the music system in Phahlane's house was the same music system that had been purchased by funds from a SAPS service provider and that he had installed in Phahlane's house.

51. After the search warrant was executed at Phahlane's house, he initiated a civil suit challenging the lawfulness of the search warrant.

52. The parties have exchanged papers in this matter and it was dormant since the latter part of 2017. Recently one of the original Task Team members, Cedrick Nkabinde, who was approached by Kgomo as mentioned in preceding paragraphs, deposed a supporting affidavit for Phahlane whilst he was undergoing a disciplinary process for several acts of misconduct. Nkabinde resigned with immediate effect on 19 October 2018, and his disciplinary hearing did not proceed.

### 53. Counter-investigation

54. I want to pause here and go back to when the initial investigation into the case of corruption and money laundering were initiated against Phahlane. O'Sullivan was the complainant and also because of his background in the matter he accompanied IPID investigators to the Sable Hills Estate to point out several witnesses to the case that the IPID was investigating. On some of the occasions he accompanied the IPID investigators together with his associate and attorney Sarah-Jane Trent.

55. As a result of the on-going investigations by the IPID with the assistance of O'Sullivan and Trent, Phahlane used his powers as the Acting National Commissioner to set up a team from the North West (Mabula Team) to start a counter-investigation on the IPID investigation against himself.

56. This SAPS counter-investigation was authorised under the guise of a security breach against the Acting National Commissioner. The North West Provincial Commissioner together with the Mabula Team concocted a report that was utilised to authorise their travel to Gauteng to investigate the purported security breach. Crime Intelligence ("CI") had earlier done an investigation of the alleged security breach and it found that there was in fact no security breach. The officers who did the investigation made statements to this effect. As a result of the concocted report, General Makhele was charged with defeating the ends of justice. This case is still with the NPA.

57. The Mabula Team then proceeded to counter the investigation of the IPID by approaching all the witnesses in the IPID investigation to get them to change their initial version against Phahlane and the SAPS service providers and their involvement in the construction of Phahlane's house and the cars.
58. Their counter-investigation resulted in a case being opened, Kameelfdrift 12/01/2017, against O'Sullivan and his associate Trent. The charges against them were, amongst others of impersonating IPID officials in terms of section 33(5) of the IPID Act, these were clearly trumped up charges. The charges were that they had visited Phahlane's Sable Hills home together with IPID investigators and that during the said visit they had impersonated IPID investigators.
59. During Trent's arrest her mobile phone was unlawfully confiscated and booked in for investigation in order to try and support the charges that were being fabricated against the pair and later on the IPID investigators that were added.
60. O'Sullivan and Trent made a number of appearances in the Pretoria Magistrate Court, in the case emanating from the Kameelfdrift case and around May 2017. Brigadier Ncube, one of the members of the Mabula Team made contact with two of the IPID investigators. He informed them that he was the investigator in the Kameelfdrift 12/01/2017 case and that he intended on adding them as co-accused in the case already before the Pretoria Magistrate Court.

61. Trent's phone was stolen by the Mabula Team and taken to Israel to be downloaded. The contents were leaked to the Sunday Times in a bid to falsely implicate myself and my investigators in wrongdoing to protect Phahlane.

62. There was a litany of charges that were brought against Mahlangu and Binang who were members of the IPID Task Team, at the top of the list were charges of contravening section 33(5) and section 33(2) of the IPID Act. The two investigators were added in State versus Sarah-Jane Trent and three others, which was held the Pretoria Magistrate Court. When Ncube had earlier come to IPID to obtain the statements of Mahlangu and Binang, I asked him why he was in Gauteng as he was based in the North West, he opened a case of intimidation against me.

63. The State Advocate in the matter was a Molatlhwa Mashuga ("**Mashuga**"), who also has some links to the NW SAPS team. The case was remanded on numerous times at the behest of the State, apparently for further investigations. After the numerous postponements for further investigations by Mashuga, the defence in October 2017, i.e IPID made an application that the matter be struck off the roll in terms of section 342A(3)(c) of the Criminal Procedure Act, No 51 of 1977, which deals with unreasonable delays in a matter before a court "

*"(3) If the court finds that the completion of the proceedings is being delayed unreasonably, the court may issue any such order as it deems fit in order to*

*eliminate the delay and any prejudice arising from it or to prevent further delay or prejudice, including an order-*

(a) ...;

(b) ...;

(c) *where the accused has not yet pleaded to the charge, that the case be struck off the roll and the prosecution not be resumed or instituted de novo without the written instruction of the attorney-general;”*

64. The Magistrate made an order that the matter be struck off the roll in terms of the above-mentioned section. The matter could only be re-enrolled with the written instruction of the NDPP, Shaun Abrahams at the time. This order by the Magistrate was made In October 2017.

65. It's important to indicate that neither the order by the Magistrate made in terms of section 342A(3)(c) of the Criminal Procedure Act nor the Prinsloo J Order, made in November 2017, stopped the Mabula Team from continuing with their counter investigation. This was clear when immediately after both orders Ncube took another warning statement, this time against Mantsha Raphesu and threatened to arrest the other members of the Task Team including myself, but despite all the threats the fabricated case is yet to be re-enrolled, further proving that the charges are baseless and are trumped up.

**Interdict and main application wrt the counter-investigation (Court order in favour of the IPID)**

66. With the on-going counter-investigation by the Mabula Team, it was clear that the intention was to scupper the IPID investigation and the IPID brought an urgent application before the North Gauteng High Court in order to stop the counter-investigation and also to seek a declaratory that members of the SAPS that were themselves subjects of an investigation by the IPID should not investigate or oversee an investigation against members of the IPID.

67. An urgent interdict was sought against the Phahlane, at the time, the North West Provincial Commissioner, Mabula and Ncube. Later, in the main application, the other members of the Mabula Team were added as respondents as they were conducting this counter-investigation against members of the IPID.

68. Throughout the exchange of papers in this matter, the Mabula Team insisted that the cases that the IPID stated they were investigating against them were “cold cases”. This was proven to be false as a list was annexed in the papers to show the status of the cases against the members of the Mabula Team. It is, in any event, disingenuous for Mabula to say as the evidence shows that the only reason the cases had not progressed was due to them being suppressed. There is a **recording** in which one of the suspects admits to torturing the deceased in the Makau case and he implicates Mabula. See **Recording 3**



69. An agreement was reached by the parties and it was made the order of the court by Prinsloo J. At the time the order was made, Phahlane had been suspended as the Acting National Commissioner and General Mothiba had been appointed to act. Prior to the Prinsloo J order that was made on 28 November 2017, Mothiba had also been engaged on countless occasions to try and resolve the matter outside of the courts.

70. Prior the making of the Prinsloo J order, there had been countless engagements with the different senior management within SAPS in a bid to avoid litigation and come to an amicable solution to the number of civil suits that were in the courts. The Portfolio Committee on Police also tried to intervene by requesting an appearance and briefing by Phahlane, whilst he was still acting National Commissioner, and his team and the Executive Director and his team in order to try and resolve the battle that was playing out between the two departments.

71. All of the engagements and attempts to amicably resolve the impasse between the two sister departments did not assist and this culminated in the Prinsloo J interim order that was agreed upon by the parties. It was further agreed that the main application where a declaratory was sought would be heard at a later stage and would ensure that the issue of the counter-investigation would be finalised.

72. Despite the order that was made, the IPID became aware after the Mabula Team were continuing with the counter-investigation against the IPID, in the form of the investigators and myself.

73. As a result the IPID continued to engage the SAPS, the ministry as well as the office of the NDPP, in trying to ascertain whether the continuing investigation was sanctioned at a senior level.

74. There were also meetings held with General Sitole and Minister Cele, after their appointments to their respective offices, in order to bring them up to speed with these matters and also with a hope that the Minister would intervene.

75. Despite all the above efforts on the part of the IPID, as can be seen from the numerous letters to the various stakeholders, the National Commissioner only indicated that he would abide by the order of the court. The Minister on the other hand was unrepresented when the matter was argued for a final order on 21 June 2018. **See Annexure L.**

76. The matter was set down for argument before Judge Tuchten on 21 and 22 June 2018. , From the outset Phahlane agreed that he would agree to not take part or to oversee any investigation that was carried out by the members of the Mabula Team and that was also made part of the Tuchten Order that was made on 26 June 2018.

77. An important point to note is that, the National Commissioner of the SAPS, Sitole prior to the proceedings had entered a notice to abide by the order of the court and this was done in his official capacity.

78. The interpretation of this notice to abide coming from the National Commissioner's office led to the question that if the Commissioner abides by the prayers of the IPID, what locus standi did the members of the Mabula Team have to continue with an investigation that did not seem to be sanctioned by the Head of the SAPS?
79. There were arguments for both sides and at the last minute the Deputy National Commissioner, General Mfazi, gave a written undertaking that the members of the Mabula Team would no longer be involved in any "revenge-investigations" against members of the IPID that were investigating them.
80. The term "revenge-investigation" was made by Judge Tuchten in his judgment on 26 June 2018. The order was in effect drafted around section 25 of the IPID Act, which speaks to instances where an investigator has a conflict of interest in any investigation that he carries out that he would have to declare such interest. The SAPS Act does not have a similar clause that dealt with conflicts of interest. The Judge in this matter added that such members of the SAPS should also be precluded from overseeing such investigation.
81. Further the above gap in the SAPS legislation would be temporarily resolved by the Tuchten Judgment until such a time that there were appropriate regulations or standing orders or national legislation dealing with this gap.

### **Court order regarding search and seizure by Phahlane on vehicle investigation**

82. During the investigation into the Phahlane vehicle case, which he claimed he owned and others were sponsored, the IPID learnt that there were several SAPS service providers that Phahlane was conducting acts of criminality with. Amongst the service providers were Durandt Snyman, Keith Keating, the proprietor of FDA and others. The relationship between these parties was unravelled and IPID together with members of the DPCI conducted search warrants on the properties of the above-mentioned service providers on 4 December 2017. **See Annexure A17.**

83. The lawfulness of the search warrants was challenged. The applicants raised technical challenges against the affidavit utilised to authorise the search warrant by the magistrate, also that the IPID officials are not police officials and therefore cannot execute a search warrant in terms of the Criminal Procedure Act and other technicalities.

84. The matter was set down and heard on 18 June 2018 and the judgement was delivered on 3 August 2018 by Judge Kollapen. This judgment dealt thoroughly with all the technical points raised by the applicants. **See Annexure N.**

85. The applicants later brought an application for leave to appeal and it was dismissed. We have been advised by IPID's attorneys that the applicants are petitioning the Supreme Court of Appeal.

## **NPA bias**

86. The NPA under the leadership of Advocate Shaun Abrahams (**“Abrahams”**), working with Advocates Sibongile Mzinyathi (**“Mzinyathi”**), George Baloyi (**“Baloyi”**), Sello Maema (**“Maema”**), Molatlhwa Mashuga (**“Mashuga”**), Raymond Mathenjwa (**“Mathenjwa”**) has lost all credibility. I am of the belief that these advocates are a core group that has been at the forefront of enabling the capture of the criminal justice cluster through the persecution of corruption fighters. They were also involved in the protection of criminal suspects by declining to prosecute suspects investigated by the IPID in cases where their subordinates who are experienced prosecutors had recommended prosecution based on abundant evidence but the advocates would override those decisions.

87. I wrote to Abrahams on numerous occasions requesting that he review Mzinyathi's and Baloyi's decisions to undermine the decisions of Senior Public Prosecutors. Abrahams simply agreed with Mzinyathi's and Baloyi's actions. **See Annexure A18.**

88. I expressed my concern that Advocate Sello Maema (**“Maema”**) had been allowed to prosecute us as in my view his actions to prosecute us without a shred of evidence involves dishonesty and a lack of integrity.

89. Mashuga was behind the prosecution of IPID investigators and O'Sullivan, against a court order, on fabricated charges to torpedo the IPID's investigation into Phahlane.

### **The role of Hogan Lovells**

90. Hogan Lovells allowed itself to be used to hollow out public institutions, especially the IPID and the DPCI. This firm was used to get rid of people in the IPID, the DPCI. Common figures in the tainted disciplinary processes with fabricated charges include Advocate William Mokhari (“**Mokhari**”) and Advocate Mxolisi Zondo (“**Zondo**”). In IPID, Sesoko was dismissed after submitting a sick note, without even being allowed to present his case by Zondo with Mokgatle and Mokhari presiding over a sham disciplinary hearing. A similar thing had happened to Sibiya at the DPCI. The same team, except for the presiding officer, were involved in Khuba’s disciplinary hearing – the result was that Khuba was dismissed for failing to implicate me in wrongdoing.

### **Crimes against the State (CATS) unit**

91. Myself, Sesoko and Khuba were investigated by the DPCI’s Crimes Against the State (Cats) unit for fraud and defeating the ends of justice. The charges were dropped as there was never any shred of evidence. This unit was used to pursue a political agenda and to target individuals within the criminal justice cluster who stood up against state capture. It is headed by Brigadier Nyameka Xaba who reported to Ntlemenza. The same unit investigated other fabricated cases against Minister Pravin Gordhan, the so-called Rogue Unit and seems to have taken instructions or worked with SARS Commissioner Tom Moyane (“**Moyane**”). This can be seen from the incident involving SARS Legal Advisor Vlok Symington, who was prevented from leaving a boardroom until he handed back a document on the instructions of Moyane.

### **Leon Mbangwa – Nhleko’s Chief of Staff**

92. Leon / Lionel Mbangwa was employed by Nhleko as his Chief of Staff. The problem with his appointment is that he is a convicted criminal and illegal immigrant with no South African Identity Book/Card. He was convicted and sentenced to four years imprisonment for using a fraudulent ID. His security screening was processed through the IPID by Kgamanyane to avoid detection were it to be done through the SSA. This begs the question: Why would government minister want an illegal immigrant as his Chief of Staff?

**See Annexure A19.**

### **Reference group**

93. In October 2014, the Minister of Police, Nkosinathi Nhleko established a reference group to “...deal with issues of human resources, suspensions... the state of crime intelligence, administrative queries and perception of SAPS.” At the time, the Minister said the ministry would use the work done by the reference group to “...turnaround the image of the police and build public confidence in the service.” Surprisingly the reference group was comprised of public officials such as Adv Raymond Mathenjwa (“**Mathenjwa**”) from the NPA. Mathenjwa would later aggressively demand the docket into the renditions investigation – which was clearly beyond the scope of the reference group announced by Nhleko. Further, this was an undesirable situation as Mathenjwa was a senior prosecutor who was involved in deciding other matters referred to the NPA by the IPID. At the time, the IPID had already referred the docket to the National Director of Public Prosecutions for a decision on prosecution. That neither Mathenjwa nor the minister saw the clear conflict of interest which could compromise the IPID’s independence suggests that there

was some ulterior purpose to the establishment of the reference group.

### **Portfolio Committee on Police**

94. During the period of my suspension, IPID staff who were under attack by Kgamanyane directed correspondence to the Portfolio Committee on Police (“PCP”) – no response was ever received. I also wrote to the chairperson of the same committee alerting him to what was going on. I never received a response from him. **See Annexure A20.**



## **ZONDO COMMISSION OF INQUIRY**

Version 7 – 11 February 2019

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### **STATEMENT TO ZONDO COMMISSION OF INQUIRY BY ROBERT JOHN McBRIDE**

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#### **Legislative mandate**

1. The Independent Police Investigative Directorate is an independent body established by the Independent Police Investigative Directorate Act No. 1 of 2011, whose objects are set out in Section 2 thereof which, *inter alia* provides that the Independent Police Investigative Directorate ("IPID") should give effect to the provisions of Section 206(6) of the Constitution of RSA i.e. to establish an independent police complaints body established by national legislation in order to investigate alleged misconduct of, or any offence committed by a member of the Police Services in any province as well as further to ensure independent oversight of the South African Police and Municipal Police Services. There are further objectives to the Act.
2. The independence and impartiality of the Directorate is entrenched in terms of Section 4 of the IPID Act, which specifically states that the Directorate i.e. IPID functions independently from the South African Police Service.
3. Section 7(4) of the IPID Act provides that:

*“The Executive Director must refer criminal offences revealed as a result of an investigation to the National Prosecuting Authority for criminal prosecution and notify the Minister of such referral.” See Annexure A1*

4. The regulations for the operation of IPID provide, *inter alia*, that an investigator of IPID, as part of his functions, after collecting all evidence, statements and technical expert reports, if applicable, must submit a report on the investigation of the offence to the Executive Director or the relevant Provincial Head, as the case may be, containing recommendations regarding further action, which may include disciplinary measures to be taken against a member of the South African Police Service or the Municipal Police Service or criminal prosecution of such member. **See Annexure A2.**
5. The Standard Operating Procedures of IPID effective as from the 1<sup>st</sup> April 2013 and in particular in Section 7.10 thereof provide a procedure for the completion and closing of files and dockets. **See Annexure A3.**

## **Appointment**

6. I was appointed the Executive Director of IPID on the 3<sup>rd</sup> March 2014, in terms of section 6 of the IPID Act. Upon my appointment, I asked to be briefed on all high profile cases. One of the cases I was briefed on was the so called “Rendition Case”. After the briefing it became clear to me that the investigation was not conducted independently and impartially in line with IPID Act. What followed is fully traversed in my founding affidavits and replying affidavits with annexures filed in the high court, labour court and the Constitutional court to challenge my unlawful suspension. See

attached affidavits marked **Annexures A4 to A6**. The Constitutional Court found the actions of the minister to be unlawful and unconstitutional and set them aside. **See Annexure A7.**

7. Before I was suspended, I had written to the Chairperson of the Portfolio Committee on Police, Mr Francois Beukman ("**Beukman**"), asking that I be allowed to clarify and account to the Portfolio Committee on media reports about "two contradicting reports". Mr Beukman rejected this offer, citing the sub-judice rule. This was a concern to me given the fact that the doctrine of separation of powers compels him to hold the Executive and IPID to account. It is noteworthy that some members of the Portfolio Committee on Police held a meeting with the then Minister of Police, Nkosinathi Nhleko ("**Nhleko**") where my removal from office and that of then DPCI Head, Anwa Dramat ("**Dramat**") were discussed. The next day, Nhleko, made a presentation to the same portfolio committee to start a process to remove Dramat. **See Annexure A8.**
8. I pause to reflect on the events that preceded the Werksmans report which was used by Nhleko to legitimise his unlawful actions and the complicity of Sandile July ("**July**"), who compiled the said report. After Nhleko appointed Werksmans to investigate the "two reports" which he falsely alleged he had been given by the IPID, several attempts were made by July to interview IPID National Head of Investigations, Matthews Sesoko ("**Sesoko**") and IPID Lead Investigator, Innocent Khuba ("**Khuba**"). Sesoko was contacted by July and Sesoko indicated his willingness to cooperate but asked that the request be sent via email and be directed to me – he also provided the

relevant email addresses. Interestingly, when the email was sent, Khuba's and Sesoko's email addresses were typed correctly but mine was not. The email meant for me was sent to [rmcbride@ipid.co.za](mailto:rmcbride@ipid.co.za) instead of [rmcbride@ipid.gov.za](mailto:rmcbride@ipid.gov.za). Sesoko picked up on what he thought had been an error and alerted Werksmans. The next time they sent the email to [rmcbrde@ipid.gov.za](mailto:rmcbrde@ipid.gov.za) (leaving out the "i" in mcbride). One is left with no other conclusion than that Werksmans was in cahoots with Nhleko to conduct a sham investigation that would enable Nhleko to get rid of myself and Dramat by hook or crook.

9. Furthermore, Khuba reported having received multiple calls from Nhleko's Personal Assistant, Amelia Monaheng asking him to meet with Nhleko, who was so desperate to get Khuba to falsely implicate me in wrongdoing that Nhleko himself called Khuba promising him that the Ministry would cover his travelling costs to Cape Town on a weekend so that I would not find out about it. These were the actions of a government minister who was willing to use any means, including lies and deceit to capture the criminal justice system. Nhleko would later go to Parliament to perpetuate the same lies with the collusion of some members of Parliament.

### **Werksmans report**

10. Mr Israel Kgamanyane ("Kgamanyane"), who was the IPID's Free State Provincial Head at the time, was appointed to act as Executive Director.
11. After his appointment, Kgamanyane instructed Sesoko and Khuba to attend

interviews at Werksmans. Thereafter the discredited Werksmans report was leaked to the Sunday Times (Stephan Hofstatter and Mzilikazi wa Afrika) and the Sunday Independent (Solly Maphumulo). The Sunday Times and Sunday Independent ran a series of false stories to prop up Nhleko's false narrative.

12. The Werksmans report was the sole evidence against me, Khuba and Sesoko. A critique of the dodgy Werksmans report was filed with my papers when I challenged my unlawful suspension in the High Court. **See Annexure A4 to A6.** It should be noted that the author of this dodgy report, Advocate Sandile July, was later quoted by Maema in court as having as threatened to challenge his subpoena in the High Court on the basis that his report was hearsay and he could not stand by it in a court of law. So this report, which cost the taxpayers over R1,3 million was used to get rid of me, Khuba and Sesoko, was not worth the paper it was written on. **See Annexure A9.**
13. Bizarrely, Nhleko later tried to get the IPID to pay R9 million in legal costs incurred by him in his unlawful and unconstitutional attempt to remove me as IPID Executive Director.
14. On 21 May 2015, Khuba and Sesoko were suspended by Kgamanyane on the instructions of the Minister for allegedly altering the IPID's Progress Report into the Rendition Investigation, dated 22 January 2015 ("**the first report**") with myself. However, it should be noted that I did not even know about the existence of the report

that was supposedly altered as it predated my appointment as IPID Executive Director.

15. During the eighteen (18) months of my suspension, I heard about Kgamanyane wreaking havoc in the IPID by initially suspending and transferring at least eight (8) senior managers for no other reason than that they worked with me or that they deposed affidavits about information which was within their knowledge as IPID employees.
16. At the time of my return to the IPID, on 19 October 2016, the Constitutional Court had confirmed the High Court decision to declare my suspension unlawful and set it aside, I became aware that more people had been displaced at IPID under the so-called “restructuring”.

### **Suspensions, transfers and dismissals**

17. I now deal with the suspensions and transfers that occurred immediately following my suspension.
18. Matthews Sesoko (“Sesoko”) was the Chief Director: Investigations and Information Management. He is the National Head of Investigations. He made an affidavit in my application to challenge the constitutionality of section 6(3) and 6(6). He was suspended on 21 May 2015. He was charged with altering the report into Zimbabwe renditions investigation. As soon as Kgamanyane was appointed as Acting Executive

Director, he asked for the Panday case which was under investigation by the IPID. To date, this case is not on the court roll. Kgamanyane also went to Limpopo and the North West and collected dockets in which former DPCI Head, Mthandazo Berning Ntlemeza and Major-General Jan Mabula were suspects.

19. Sesoko was subsequently unlawfully dismissed by Advocate Mxolisi Zondo (“**Zondo**”), who presided over General Sibiya’s disciplinary hearing, without having presented his case. He had requested a postponement owing to illness but Zondo rejected his medical certificate and dismissed him in absentia. In his written ruling, Zondo concedes that it would have been fair to hear Sesoko’s version of events but bizarrely dismisses him with immediate effect, without allowing him to state his defence, because the medical certificate submitted by Sesoko’s counsel was from a general practitioner and not from a specialist. Furthermore, Sesoko’s dismissal was on the basis of hearsay evidence of a single witness. **See Annexure A10.**
20. Sesoko was also criminally charged with Khuba and me for fraud and defeating the ends of justice. The criminal charges were withdrawn on 01 November 2016. Upon my return to office in 2016, a settlement was reached with Sesoko’s attorneys to reinstate him to his former position.
21. Upon my return to office, I discovered that there were allegations that of the manipulation of cases to artificially inflate the performance of the IPID in my absence. Kgamanyane even went to Parliament and reported that performance was much better in the absence of the suspended and transferred, however, this was a blatant lie which was told to make himself look good. Nhleko awarded him a bonus for good

performance.

22. Innocent Khuba ("Khuba") is the Provincial Head: Limpopo. Khuba was the lead investigator into allegations that some Zimbabweans were unlawfully handed over to Zimbabwean police, resulting in them being killed. He was suspended on 21 May 2015 on allegations of altering the investigation report into Zimbabwe 'renditions' with myself and Sesoko. During his suspension, he was told that he was suspended on the Minister's instructions. Khuba made an affidavit for my Constitutional Court case.
23. Prior to his dismissal, Khuba was approached by Werksmans, the Minister's PA and the Minister himself wanting to interview him and get him to implicate me. When he failed to implicate myself and Sesoko, disciplinary charges were brought against him. After six months of suspension, Khuba reached a plea bargain deal and was given a final written warning. Within a week, Khuba was summarily dismissed after he refused to falsely implicate me and Sesoko. Upon his refusal, he was dismissed with immediate effect.
24. Well before my appointment as IPID Executive Director, Ntlemeza himself had told Khuba while he was doing the rendition investigation that it was the only thing holding up his move to the DPCI after a 'hit on Dramat'. **See Annexure A11.**



25. After Khuba was dismissed, he was approached by officers from the Hawks and promised his job back if only he made a false statement saying I had forced him to change the rendition report. Khuba recorded this approach by a Colonel Mahlangu, who is heard imploring Khuba to make a false statement to empower Ntlemeza. In the recording, Colonel Mahlangu further says Khuba would be restored to his position if he made such a statement. **See Recording 1.**
26. Khuba has since been restored to his position through an order of the Labour Court. Furthermore, the criminal charges against Khuba, Sesoko and myself were withdrawn on 01 November 2016.
27. Felicia Ntshangase (“**Ntshangase**”) is the Gauteng Provincial Head who was suspended on 8 July 2015 by Kgamanyane. Five days after my suspension, Nhleko addressed IPID management and made disparaging remarks about the judiciary. Ntshangase made an affidavit regarding this. She was suspended on allegations of nepotism for recommending the appointments of 3 officials in her office. However, the decision to appoint said officials was made by Mr Kgamanyane. The Public Service Commission later cleared Ntshangase of wrongdoing and recommended action against Kgamanyane instead.
28. Nomkhosi Netsianda (“**Netsianda**”) is the head of corporate services. She was suspended on 19 August 2015 on allegations of leaking information to the media. The

leaked information concerned the appointment of the Deputy Minister's daughter to a Deputy Director: Investigation post in the Free State, where Kgamanyane was the Provincial Head. Ms Netsianda advised against the appointment of the Deputy Minister's daughter. The documentation and her written notes ended up in a City Press report. The Public Service Commission ("**PSC**") later found that the Deputy Minister's daughter did not have the experience required for the post. Netsianda was also charged for conducting herself in a disgraceful manner by raising her voice during the Audit Committee meeting, where the funding of the IPID's case challenging Nhleko's interference with the IPID's independence was discussed. The disciplinary case against Netsianda was driven by the chairperson of the Audit Committee. **See Annexure A12.**

29. Netsianda's position was advertised in May 2016 and Molefe Matsomela ("**Matsomela**") was subsequently appointed on a six-month contract. Matsomela's security screening was done before the post was advertised, clearly indicating that advertisement and interviews were just a formality – the post was earmarked for Matsomela. During his tenure, the so-called restructuring proceeded at full speed and some people were transferred to more than one position. Matsomela never came back to work upon my return to office and he resigned thereafter. Since Matsomela's appointment was irregular, the IPID has instituted a process to recover the fruitless expenditure relating thereto in the amount of R450 456.44.

30. The reputations of the affected officials were ruined. Kgamanayane even issued a directive for IPID staff not to talk to the suspended and transferred officials. Due to the fact that there were no grounds for the transfers, three officials, Antonett Mphago (“**Mphago**”), Viceroy Maoka (“**Maoka**”) and Moses Dlamini (“**Dlamini**”), lodged a dispute at the General Public Service Sectoral Bargaining Council (“**GPSSBC**”) for their unfair transfers and a case of unlawful transfer in the Labour Court. The three were transferred for 8 months at great cost to the IPID just to punish them for having worked with me. The total cost of the transfers is in excess of R1 million, including the arbitration award which they won at the GPSSBC.
31. Pule Hillary Viceroy Maoka (“**Maoka**”) is the Director: Litigation Services. He made an affidavit for my Constitutional Court case. Maoka lodged a complaint regarding the conduct of Adv. Baloyi of NPA in the rendition prosecution. Mr Maoka was precautionary transferred to Limpopo on 1 September 2015 on allegations of leaking information to the media. Maoka was transferred at the same time as Antonett Mphago (to Gauteng) and Moses Dlamini (to KwaZulu-Natal). He was never charged with leaking information but was charged with the cancellation of bookings and failure to inform his supervisor and failure to report sick leave to the supervisor. Maoka was re-instated by the Labour Court on 29 April 2016, returning to his office on 06 May 2016. He was suspended on 12 May 2016 for 'providing legal assistance to his colleagues and for failure to make financial disclosure'. **See Annexure A13.**

32. Moses Dlamini (“**Dlamini**”) is the National Spokesman who was suspended on 20 June 2016. He made an affidavit in my Constitutional Court case. Dlamini was precautionary transferred to KwaZulu-Natal on 1 September 2015 on allegations of leaking information to the media. Dlamini was transferred at the same time as Antonette Mphago (to Gauteng) and Viceroy Maoka (to Limpopo). He was never charged with leaking information but was charged with the cancellation of bookings and failure to report sick leave to the supervisor timeously. Dlamini was re-instated by the Labour Court on 29 April 2016, returning to his office on 06 May 2016. He was suspended on 20 June 2016 for speaking to suspended officials (Maoka and McBride) against the directive of Kgamanyane, as well as allegations of sending disparaging emails about officials to IPID staff. Kgamanyane had issued a directive that IPID staff should not communicate with transferred and suspended officials. Dlamini was served with a letter of intent to permanently transfer him to Eastern Cape within 3 days of returning to the office. After objecting, he was transferred to the post of Director: Investigations at National Office effective 1 July 2016 as part of the “restructuring” After he objected to the transfer, he was suspended. **See Annexure A13.**
33. Dlamini's disciplinary hearing was presided over by the Limpopo Director of Public Prosecutions, Advocate Ivy Thenga (“**Thenga**”) to whom IPID makes referrals of cases investigated by it – a clear conflict of interest. Thenga said that she had been instructed to finalise the hearing over the weekend. Dlamini was reinstated upon my return to office.

34. Antonett Mphago (“Mphago”) is the Director: Executive Support in the office of the Executive Director. She was precautionary transferred to Gauteng on allegations of leaking information to the media. The said information related to the appointment of the daughter of the Deputy Minister of Police's daughter to a post of Deputy Director: Investigations in the Free State. She was transferred to Gauteng provincial office to the position of Deputy Director: Corporate Services position pending finalisation of investigations. She was never charged with leaking of information nor notified of the outcome of the investigation. On 1 December 2015, Mphago's transfer was uplifted after she had written to Kgamanyane informing him that 60 days had elapsed since her transfer and that no charges had been brought against her. She was denied access to her office and had to squat in the passage. On 30 June 2016 she was transferred to a position of Director: Compliance Monitoring, as a result of 'restructuring'. Mphago was under investigation on allegations of meeting/talking to with me on my visit to the national office on 9 June 2016. **See Annexure A13.**

## **Restructuring**

35. It is clear that Kgamanyane subscribed to the view that “If it works – break it!”, as there is no other way to comprehend the rationale behind the restructuring that went on during his tenure. He was like a mad scientist, transferring people to positions for which that had no competencies or experience. Some people even had to seek medical attention as a result of the senseless restructuring.
36. Vinesh Boodhoo (**“Boodhoo”**) was the Director: Investigation in Gauteng. He was

appointed by Ntshangase with two other people, who were forced out of IPID due to their association with Ms Ntshangase. Dan Morema (“Morema”) was appointed to act in Ntshangase's position, while she was on suspension. Morema victimised Boodhoo, as a result, he lodged a complaint against Morema. Boodhoo received correspondence informing him that the outcome of the investigation of his complaint was that he should be transferred out of Gauteng. Boodhoo was permanently transferred to the post of Director: Investigations in the Eastern Cape effective 1 July 2016 as a result of “restructuring”.

37. Marianne Moroasui (**“Moroasui”**) is the Chief Director: Legal Services. In March 2016 Kgamanyane had the Provincial Head of Kimberly and the then Deputy Provincial Head of the Western Cape take over the running of Legal Services whilst she was in the office. During the purported restructuring of the IPID, she was informed that she would be transferred to a position of Provincial Head in either Mpumalanga or Kimberley. She resisted the move and referred the matter to the PSA. Whilst still in consultation with the Kgamanyane, he made the decision to finally transfer her to Kimberley as Provincial Head. She was instructed to commence in Kimberley on 1 July 2016. She did not comply with the instruction and continued reporting to the National Office and one day she went out to lunch and upon her return her “biometric access” was deactivated and she could not access the National Office. Moroasui was informed by Matsomela, who was at the time acting as the head of Corporate Services that she had to report to Kimberly. Her Colleagues had to bring her handbag,

work bag and other personal belongings to her on the street as she was refused access, even to the National Office parking.

38. Zuziwe Cele (**“Cele”**) is the Deputy Director: Supply Chain Management. She was permanently transferred to Deputy Director: Corporate Services in Gauteng Province effective 1 August 2016 as a result of restructuring. She was seen to be a stumbling block to procurement.
39. Lindokuhle Ngcongco (**“Ngcongco”**) was the Chief Financial Officer (“CFO”) was transferred to Gauteng as the Provincial Head to head investigations. She was perceived to be a stumbling block to Kgamanyane’s plans for procurement. She was also opposed to the IPID paying for legal costs incurred by the Minister of Police (Nhleko). She has since left the IPID.
40. Mamodishe Molope (**“Molope”**) is the Chief Director: Compliance Monitoring and Compliance Management. She was transferred to Mpumalanga as Provincial Head to lead investigations, as part of restructuring.
41. Quite a number of other junior people were also transferred from their positions as a result of “restructuring” initiated by Kgamanyane with the approval of former Minister of Police, Nkosinathi Nhleko.

### **Return to office**

42. I returned to office on 19 October 2016 and requested Kgamanyane for a handover report. He was quite petulant and refused to give me such a report. He never returned to work and was irregularly transferred by Nhleko to the DPCI. He was accepted by former Hawks Head, Mthandazo Ntlemeza and appointed to the DPCI structure in the Free State. I had no say in Kgamanyane's transfer, which was done by Nhleko and Ntlemeza without any consultation. There is no greater example of interference in the operations of the IPID by a minister who had been found to have acted unlawfully and unconstitutionally by the Constitutional Court. To make matters worse, Kgamanyane was facing disciplinary action for the havoc he had caused at IPID. I wrote to Ntlemeza about my concerns. See **Annexure A14**.

43. Nhleko had awarded Kgamanyane a performance bonus which was clearly a gratification. He was the only one in IPID to be awarded a performance bonus.

### **Infiltration of IPID by Crime Intelligence**

44. I also found that IPID had been infiltrated by Crime Intelligence in the form of Tlou Kgomo ("Kgomo") and Emily Motsugi ("**Motsugi**"). Kgomo had been appointed as Director: Investigations. He was appointed to act as head of investigations in Sesoko's position. The two beat a hasty retreat back to Crime Intelligence soon after my return to office. My



next encounter with Kgomo was in Parliament where he was part of Phahlane's team to counter IPID's investigations. Kgomo would later approach IPID investigators, Mandla Mahlangu (**"Mahlangu"**) and Cedrick Nkabinde (**"Nkabinde"**), to offer them Brigadier positions to induce them to make false statements to implicate IPID managers in wrongdoing. In a recording made by one of the investigators, Kgomo can be heard making such an offer to Mahlangu. He confirms to Mahlangu that he is working with the North West team led by Major General Jan Mabula (**"Mabula"**) investigating a concocted case that would bring me "down", along with other IPID investigators and torpedo the investigation against Phahlane. Kgomo also took Mahlangu to Potchefstroom to meet Mabula. **See Annexure A15 (there's also a recording).**

45. Upon my return from my suspension on 19 October 2016 I was alerted of irregularities on how investigations had been conducted during the time when I was on suspension. There were allegations that certain cases that were being investigated by the IPID had been pre-maturely closed without carrying out proper investigation processes as contained in the Standard Operating Procedures. This was done in certain instances to push the statistics and other acts that amounted to defeating the ends of justice. These cases were termed "special closures". This was intended to manipulate statistics to give an impression that performance had been better under Kgamanyane. I instructed our Integrity Strengthening Unit to investigate these allegations. The Auditor-General also flagged some of these cases. One employee has already been dismissed as a result of this investigation. Another senior employee, Dan Morema, resigned when he was approached to make a statement. **See Annexure A16.**

## **Investigation into Phahlane**

46. Soon after my arrival I received a complaint from Paul O'Sullivan ("**O'Sullivan**"). The complaint was about a case of corruption and money laundering that had been opened against the then Acting National Commissioner of Police, General Phahlane. This case was first reported to the IPID before my arrival.
47. O'Sullivan had brought the case to the attention of Mr Kgamanyane, the Acting Executive Director, in March 2016 while I was on suspension. The complaint brought by O'Sullivan was that the case had not been investigated and he requested me to intervene and ensure that matter was investigated. One of the strange things that I found upon my return was that two cases had been opened, one as a duplicate of the other and vice versa – and both were then closed as duplicates of each other.
48. At the end of November 2016, a Task Team was formed that was to investigate the cases of corruption and money laundering that were levelled against General Phahlane. The Task Team comprised of Mandla Mahlangu, Temane Binang, Mantsha Raphesu and Cedrick Nkabinde.
49. The case to be investigated had to do with the construction of Phahlane's house at Sable Hills Estate allegedly with funds that were provided by a service provider to the SAPS. There was also the case of a music system worth R80 000 that was alleged to have been paid from the account of a service provider to the SAPS. Further there was a case of

vehicles in Phahlane's possession that, according to him, were either purchased and owned by him or sponsored for his use. The IPID investigated all cases and there was clear evidence of a corrupt relationship between Phahlane and service providers to the SAPS.

50. During January 2017 a search warrant was executed at the Sable Hills home of Phahlane. The purpose of the search was to identify the music system that was bought and paid for by a SAPS service provider. Present at the search was the person who had installed the music system, this was for purposes of identifying that the music system in Phahlane's house was the same music system that had been purchased by funds from a SAPS service provider and that he had installed in Phahlane's house.

51. After the search warrant was executed at Phahlane's house, he initiated a civil suit challenging the lawfulness of the search warrant.

52. The parties have exchanged papers in this matter and it was dormant since the latter part of 2017. Recently one of the original Task Team members, Cedrick Nkabinde, who was approached by Kgomo as mentioned in preceding paragraphs, deposed a supporting affidavit for Phahlane whilst he was undergoing a disciplinary process for several acts of misconduct. Nkabinde resigned with immediate effect on 19 October 2018, and his disciplinary hearing did not proceed.

### 53. Counter-investigation

54. I want to pause here and go back to when the initial investigation into the case of corruption and money laundering were initiated against Phahlane. O'Sullivan was the complainant and also because of his background in the matter he accompanied IPID investigators to the Sable Hills Estate to point out several witnesses to the case that the IPID was investigating. On some of the occasions he accompanied the IPID investigators together with his associate and attorney Sarah-Jane Trent.

55. As a result of the on-going investigations by the IPID with the assistance of O'Sullivan and Trent, Phahlane used his powers as the Acting National Commissioner to set up a team from the North West (Mabula Team) to start a counter-investigation on the IPID investigation against himself.

56. This SAPS counter-investigation was authorised under the guise of a security breach against the Acting National Commissioner. The North West Provincial Commissioner together with the Mabula Team concocted a report that was utilised to authorise their travel to Gauteng to investigate the purported security breach. Crime Intelligence ("CI") had earlier done an investigation of the alleged security breach and it found that there was in fact no security breach. The officers who did the investigation made statements to this effect. As a result of the concocted report, General Makhele was charged with defeating the ends of justice. This case is still with the NPA.

57. The Mabula Team then proceeded to counter the investigation of the IPID by approaching all the witnesses in the IPID investigation to get them to change their initial version against Phahlane and the SAPS service providers and their involvement in the construction of Phahlane's house and the cars.
58. Their counter-investigation resulted in a case being opened, Kameelfdrift 12/01/2017, against O'Sullivan and his associate Trent. The charges against them were, amongst others of impersonating IPID officials in terms of section 33(5) of the IPID Act, these were clearly trumped up charges. The charges were that they had visited Phahlane's Sable Hills home together with IPID investigators and that during the said visit they had impersonated IPID investigators.
59. During Trent's arrest her mobile phone was unlawfully confiscated and booked in for investigation in order to try and support the charges that were being fabricated against the pair and later on the IPID investigators that were added.
60. O'Sullivan and Trent made a number of appearances in the Pretoria Magistrate Court, in the case emanating from the Kameelfdrift case and around May 2017. Brigadier Ncube, one of the members of the Mabula Team made contact with two of the IPID investigators. He informed them that he was the investigator in the Kameelfdrift 12/01/2017 case and that he intended on adding them as co-accused in the case already before the Pretoria Magistrate Court.

61. Trent's phone was stolen by the Mabula Team and taken to Israel to be downloaded. The contents were leaked to the Sunday Times in a bid to falsely implicate myself and my investigators in wrongdoing to protect Phahlane.

62. There was a litany of charges that were brought against Mahlangu and Binang who were members of the IPID Task Team, at the top of the list were charges of contravening section 33(5) and section 33(2) of the IPID Act. The two investigators were added in State versus Sarah-Jane Trent and three others, which was held the Pretoria Magistrate Court. When Ncube had earlier come to IPID to obtain the statements of Mahlangu and Binang, I asked him why he was in Gauteng as he was based in the North West, he opened a case of intimidation against me.

63. The State Advocate in the matter was a Molatlhwa Mashuga ("**Mashuga**"), who also has some links to the NW SAPS team. The case was remanded on numerous times at the behest of the State, apparently for further investigations. After the numerous postponements for further investigations by Mashuga, the defence in October 2017, i.e IPID made an application that the matter be struck off the roll in terms of section 342A(3)(c) of the Criminal Procedure Act, No 51 of 1977, which deals with unreasonable delays in a matter before a court "

*"(3) If the court finds that the completion of the proceedings is being delayed unreasonably, the court may issue any such order as it deems fit in order to*

*eliminate the delay and any prejudice arising from it or to prevent further delay or prejudice, including an order-*

(a) ...;

(b) ...;

(c) *where the accused has not yet pleaded to the charge, that the case be struck off the roll and the prosecution not be resumed or instituted de novo without the written instruction of the attorney-general;”*

64. The Magistrate made an order that the matter be struck off the roll in terms of the above-mentioned section. The matter could only be re-enrolled with the written instruction of the NDPP, Shaun Abrahams at the time. This order by the Magistrate was made In October 2017.

65. It's important to indicate that neither the order by the Magistrate made in terms of section 342A(3)(c) of the Criminal Procedure Act nor the Prinsloo J Order, made in November 2017, stopped the Mabula Team from continuing with their counter investigation. This was clear when immediately after both orders Ncube took another warning statement, this time against Mantsha Raphesu and threatened to arrest the other members of the Task Team including myself, but despite all the threats the fabricated case is yet to be re-enrolled, further proving that the charges are baseless and are trumped up.

**Interdict and main application wrt the counter-investigation (Court order in favour of the IPID)**

66. With the on-going counter-investigation by the Mabula Team, it was clear that the intention was to scupper the IPID investigation and the IPID brought an urgent application before the North Gauteng High Court in order to stop the counter-investigation and also to seek a declaratory that members of the SAPS that were themselves subjects of an investigation by the IPID should not investigate or oversee an investigation against members of the IPID.

67. An urgent interdict was sought against the Phahlane, at the time, the North West Provincial Commissioner, Mabula and Ncube. Later, in the main application, the other members of the Mabula Team were added as respondents as they were conducting this counter-investigation against members of the IPID.

68. Throughout the exchange of papers in this matter, the Mabula Team insisted that the cases that the IPID stated they were investigating against them were “cold cases”. This was proven to be false as a list was annexed in the papers to show the status of the cases against the members of the Mabula Team. It is, in any event, disingenuous for Mabula to say as the evidence shows that the only reason the cases had not progressed was due to them being suppressed. There is a **recording** in which one of the suspects admits to torturing the deceased in the Makau case and he implicates Mabula. See **Recording 3**



69. An agreement was reached by the parties and it was made the order of the court by Prinsloo J. At the time the order was made, Phahlane had been suspended as the Acting National Commissioner and General Mothiba had been appointed to act. Prior to the Prinsloo J order that was made on 28 November 2017, Mothiba had also been engaged on countless occasions to try and resolve the matter outside of the courts.

70. Prior the making of the Prinsloo J order, there had been countless engagements with the different senior management within SAPS in a bid to avoid litigation and come to an amicable solution to the number of civil suits that were in the courts. The Portfolio Committee on Police also tried to intervene by requesting an appearance and briefing by Phahlane, whilst he was still acting National Commissioner, and his team and the Executive Director and his team in order to try and resolve the battle that was playing out between the two departments.

71. All of the engagements and attempts to amicably resolve the impasse between the two sister departments did not assist and this culminated in the Prinsloo J interim order that was agreed upon by the parties. It was further agreed that the main application where a declaratory was sought would be heard at a later stage and would ensure that the issue of the counter-investigation would be finalised.

72. Despite the order that was made, the IPID became aware after the Mabula Team were continuing with the counter-investigation against the IPID, in the form of the investigators and myself.

73. As a result the IPID continued to engage the SAPS, the ministry as well as the office of the NDPP, in trying to ascertain whether the continuing investigation was sanctioned at a senior level.

74. There were also meetings held with General Sitole and Minister Cele, after their appointments to their respective offices, in order to bring them up to speed with these matters and also with a hope that the Minister would intervene.

75. Despite all the above efforts on the part of the IPID, as can be seen from the numerous letters to the various stakeholders, the National Commissioner only indicated that he would abide by the order of the court. The Minister on the other hand was unrepresented when the matter was argued for a final order on 21 June 2018. **See Annexure L.**

76. The matter was set down for argument before Judge Tuchten on 21 and 22 June 2018. , From the outset Phahlane agreed that he would agree to not take part or to oversee any investigation that was carried out by the members of the Mabula Team and that was also made part of the Tuchten Order that was made on 26 June 2018.

77. An important point to note is that, the National Commissioner of the SAPS, Sitole prior to the proceedings had entered a notice to abide by the order of the court and this was done in his official capacity.

78. The interpretation of this notice to abide coming from the National Commissioner's office led to the question that if the Commissioner abides by the prayers of the IPID, what locus standi did the members of the Mabula Team have to continue with an investigation that did not seem to be sanctioned by the Head of the SAPS?

79. There were arguments for both sides and at the last minute the Deputy National Commissioner, General Mfazi, gave a written undertaking that the members of the Mabula Team would no longer be involved in any "revenge-investigations" against members of the IPID that were investigating them.

80. The term "revenge-investigation" was made by Judge Tuchten in his judgment on 26 June 2018. The order was in effect drafted around section 25 of the IPID Act, which speaks to instances where an investigator has a conflict of interest in any investigation that he carries out that he would have to declare such interest. The SAPS Act does not have a similar clause that dealt with conflicts of interest. The Judge in this matter added that such members of the SAPS should also be precluded from overseeing such investigation.

81. Further the above gap in the SAPS legislation would be temporarily resolved by the Tuchten Judgment until such a time that there were appropriate regulations or standing orders or national legislation dealing with this gap.

### **Court order regarding search and seizure by Phahlane on vehicle investigation**

82. During the investigation into the Phahlane vehicle case, which he claimed he owned and others were sponsored, the IPID learnt that there were several SAPS service providers that Phahlane was conducting acts of criminality with. Amongst the service providers were Durandt Snyman, Keith Keating, the proprietor of FDA and others. The relationship between these parties was unravelled and IPID together with members of the DPCI conducted search warrants on the properties of the above-mentioned service providers on 4 December 2017. **See Annexure A17.**

83. The lawfulness of the search warrants was challenged. The applicants raised technical challenges against the affidavit utilised to authorise the search warrant by the magistrate, also that the IPID officials are not police officials and therefore cannot execute a search warrant in terms of the Criminal Procedure Act and other technicalities.

84. The matter was set down and heard on 18 June 2018 and the judgement was delivered on 3 August 2018 by Judge Kollapen. This judgment dealt thoroughly with all the technical points raised by the applicants. **See Annexure N.**

85. The applicants later brought an application for leave to appeal and it was dismissed. We have been advised by IPID's attorneys that the applicants are petitioning the Supreme Court of Appeal.

## **NPA bias**

86. The NPA under the leadership of Advocate Shaun Abrahams (**“Abrahams”**), working with Advocates Sibongile Mzinyathi (**“Mzinyathi”**), George Baloyi (**“Baloyi”**), Sello Maema (**“Maema”**), Molatlhwa Mashuga (**“Mashuga”**), Raymond Mathenjwa (**“Mathenjwa”**) has lost all credibility. I am of the belief that these advocates are a core group that has been at the forefront of enabling the capture of the criminal justice cluster through the persecution of corruption fighters. They were also involved in the protection of criminal suspects by declining to prosecute suspects investigated by the IPID in cases where their subordinates who are experienced prosecutors had recommended prosecution based on abundant evidence but the advocates would override those decisions.

87. I wrote to Abrahams on numerous occasions requesting that he review Mzinyathi's and Baloyi's decisions to undermine the decisions of Senior Public Prosecutors. Abrahams simply agreed with Mzinyathi's and Baloyi's actions. **See Annexure A18.**

88. I expressed my concern that Advocate Sello Maema (**“Maema”**) had been allowed to prosecute us as in my view his actions to prosecute us without a shred of evidence involves dishonesty and a lack of integrity.

89. Mashuga was behind the prosecution of IPID investigators and O'Sullivan, against a court order, on fabricated charges to torpedo the IPID's investigation into Phahlane.

### **The role of Hogan Lovells**

90. Hogan Lovells allowed itself to be used to hollow out public institutions, especially the IPID and the DPCI. This firm was used to get rid of people in the IPID, the DPCI. Common figures in the tainted disciplinary processes with fabricated charges include Advocate William Mokhari (“**Mokhari**”) and Advocate Mxolisi Zondo (“**Zondo**”). In IPID, Sesoko was dismissed after submitting a sick note, without even being allowed to present his case by Zondo with Mokgatle and Mokhari presiding over a sham disciplinary hearing. A similar thing had happened to Sibiya at the DPCI. The same team, except for the presiding officer, were involved in Khuba’s disciplinary hearing – the result was that Khuba was dismissed for failing to implicate me in wrongdoing.

### **Crimes against the State (CATS) unit**

91. Myself, Sesoko and Khuba were investigated by the DPCI’s Crimes Against the State (Cats) unit for fraud and defeating the ends of justice. The charges were dropped as there was never any shred of evidence. This unit was used to pursue a political agenda and to target individuals within the criminal justice cluster who stood up against state capture. It is headed by Brigadier Nyameka Xaba who reported to Ntlemenza. The same unit investigated other fabricated cases against Minister Pravin Gordhan, the so-called Rogue Unit and seems to have taken instructions or worked with SARS Commissioner Tom Moyane (“**Moyane**”). This can be seen from the incident involving SARS Legal Advisor Vlok Symington, who was prevented from leaving a boardroom until he handed back a document on the instructions of Moyane.

### **Leon Mbangwa – Nhleko’s Chief of Staff**

92. Leon / Lionel Mbangwa was employed by Nhleko as his Chief of Staff. The problem with his appointment is that he is a convicted criminal and illegal immigrant with no South African Identity Book/Card. He was convicted and sentenced to four years imprisonment for using a fraudulent ID. His security screening was processed through the IPID by Kgamanyane to avoid detection were it to be done through the SSA. This begs the question: Why would government minister want an illegal immigrant as his Chief of Staff?

**See Annexure A19.**

### **Reference group**

93. In October 2014, the Minister of Police, Nkosinathi Nhleko established a reference group to “...deal with issues of human resources, suspensions... the state of crime intelligence, administrative queries and perception of SAPS.” At the time, the Minister said the ministry would use the work done by the reference group to “...turnaround the image of the police and build public confidence in the service.” Surprisingly the reference group was comprised of public officials such as Adv Raymond Mathenjwa (“**Mathenjwa**”) from the NPA. Mathenjwa would later aggressively demand the docket into the renditions investigation – which was clearly beyond the scope of the reference group announced by Nhleko. Further, this was an undesirable situation as Mathenjwa was a senior prosecutor who was involved in deciding other matters referred to the NPA by the IPID. At the time, the IPID had already referred the docket to the National Director of Public Prosecutions for a decision on prosecution. That neither Mathenjwa nor the minister saw the clear conflict of interest which could compromise the IPID’s independence suggests that there

was some ulterior purpose to the establishment of the reference group.

### **Portfolio Committee on Police**

94. During the period of my suspension, IPID staff who were under attack by Kgamanyane directed correspondence to the Portfolio Committee on Police (“PCP”) – no response was ever received. I also wrote to the chairperson of the same committee alerting him to what was going on. I never received a response from him. **See Annexure A20.**



## **ZONDO COMMISSION OF INQUIRY**

Version 7 – 11 February 2019

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### **STATEMENT TO ZONDO COMMISSION OF INQUIRY BY ROBERT JOHN McBRIDE**

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#### **Legislative mandate**

1. The Independent Police Investigative Directorate is an independent body established by the Independent Police Investigative Directorate Act No. 1 of 2011, whose objects are set out in Section 2 thereof which, *inter alia* provides that the Independent Police Investigative Directorate ("IPID") should give effect to the provisions of Section 206(6) of the Constitution of RSA i.e. to establish an independent police complaints body established by national legislation in order to investigate alleged misconduct of, or any offence committed by a member of the Police Services in any province as well as further to ensure independent oversight of the South African Police and Municipal Police Services. There are further objectives to the Act.
2. The independence and impartiality of the Directorate is entrenched in terms of Section 4 of the IPID Act, which specifically states that the Directorate i.e. IPID functions independently from the South African Police Service.
3. Section 7(4) of the IPID Act provides that:

*“The Executive Director must refer criminal offences revealed as a result of an investigation to the National Prosecuting Authority for criminal prosecution and notify the Minister of such referral.” See Annexure A1*

4. The regulations for the operation of IPID provide, *inter alia*, that an investigator of IPID, as part of his functions, after collecting all evidence, statements and technical expert reports, if applicable, must submit a report on the investigation of the offence to the Executive Director or the relevant Provincial Head, as the case may be, containing recommendations regarding further action, which may include disciplinary measures to be taken against a member of the South African Police Service or the Municipal Police Service or criminal prosecution of such member. **See Annexure A2.**
5. The Standard Operating Procedures of IPID effective as from the 1<sup>st</sup> April 2013 and in particular in Section 7.10 thereof provide a procedure for the completion and closing of files and dockets. **See Annexure A3.**

## **Appointment**

6. I was appointed the Executive Director of IPID on the 3<sup>rd</sup> March 2014, in terms of section 6 of the IPID Act. Upon my appointment, I asked to be briefed on all high profile cases. One of the cases I was briefed on was the so called “Rendition Case”. After the briefing it became clear to me that the investigation was not conducted independently and impartially in line with IPID Act. What followed is fully traversed in my founding affidavits and replying affidavits with annexures filed in the high court, labour court and the Constitutional court to challenge my unlawful suspension. See

attached affidavits marked **Annexures A4 to A6**. The Constitutional Court found the actions of the minister to be unlawful and unconstitutional and set them aside. **See Annexure A7.**

7. Before I was suspended, I had written to the Chairperson of the Portfolio Committee on Police, Mr Francois Beukman ("**Beukman**"), asking that I be allowed to clarify and account to the Portfolio Committee on media reports about "two contradicting reports". Mr Beukman rejected this offer, citing the sub-judice rule. This was a concern to me given the fact that the doctrine of separation of powers compels him to hold the Executive and IPID to account. It is noteworthy that some members of the Portfolio Committee on Police held a meeting with the then Minister of Police, Nkosinathi Nhleko ("**Nhleko**") where my removal from office and that of then DPCI Head, Anwa Dramat ("**Dramat**") were discussed. The next day, Nhleko, made a presentation to the same portfolio committee to start a process to remove Dramat. **See Annexure A8.**
8. I pause to reflect on the events that preceded the Werksmans report which was used by Nhleko to legitimise his unlawful actions and the complicity of Sandile July ("**July**"), who compiled the said report. After Nhleko appointed Werksmans to investigate the "two reports" which he falsely alleged he had been given by the IPID, several attempts were made by July to interview IPID National Head of Investigations, Matthews Sesoko ("**Sesoko**") and IPID Lead Investigator, Innocent Khuba ("**Khuba**"). Sesoko was contacted by July and Sesoko indicated his willingness to cooperate but asked that the request be sent via email and be directed to me – he also provided the

relevant email addresses. Interestingly, when the email was sent, Khuba's and Sesoko's email addresses were typed correctly but mine was not. The email meant for me was sent to [rmcbride@ipid.co.za](mailto:rmcbride@ipid.co.za) instead of [rmcbride@ipid.gov.za](mailto:rmcbride@ipid.gov.za). Sesoko picked up on what he thought had been an error and alerted Werksmans. The next time they sent the email to [rmcbrde@ipid.gov.za](mailto:rmcbrde@ipid.gov.za) (leaving out the "i" in mcbride). One is left with no other conclusion than that Werksmans was in cahoots with Nhleko to conduct a sham investigation that would enable Nhleko to get rid of myself and Dramat by hook or crook.

9. Furthermore, Khuba reported having received multiple calls from Nhleko's Personal Assistant, Amelia Monaheng asking him to meet with Nhleko, who was so desperate to get Khuba to falsely implicate me in wrongdoing that Nhleko himself called Khuba promising him that the Ministry would cover his travelling costs to Cape Town on a weekend so that I would not find out about it. These were the actions of a government minister who was willing to use any means, including lies and deceit to capture the criminal justice system. Nhleko would later go to Parliament to perpetuate the same lies with the collusion of some members of Parliament.

### **Werksmans report**

10. Mr Israel Kgamanyane ("Kgamanyane"), who was the IPID's Free State Provincial Head at the time, was appointed to act as Executive Director.
11. After his appointment, Kgamanyane instructed Sesoko and Khuba to attend

interviews at Werksmans. Thereafter the discredited Werksmans report was leaked to the Sunday Times (Stephan Hofstatter and Mzilikazi wa Afrika) and the Sunday Independent (Solly Maphumulo). The Sunday Times and Sunday Independent ran a series of false stories to prop up Nhleko's false narrative.

12. The Werksmans report was the sole evidence against me, Khuba and Sesoko. A critique of the dodgy Werksmans report was filed with my papers when I challenged my unlawful suspension in the High Court. **See Annexure A4 to A6.** It should be noted that the author of this dodgy report, Advocate Sandile July, was later quoted by Maema in court as having as threatened to challenge his subpoena in the High Court on the basis that his report was hearsay and he could not stand by it in a court of law. So this report, which cost the taxpayers over R1,3 million was used to get rid of me, Khuba and Sesoko, was not worth the paper it was written on. **See Annexure A9.**
13. Bizarrely, Nhleko later tried to get the IPID to pay R9 million in legal costs incurred by him in his unlawful and unconstitutional attempt to remove me as IPID Executive Director.
14. On 21 May 2015, Khuba and Sesoko were suspended by Kgamanyane on the instructions of the Minister for allegedly altering the IPID's Progress Report into the Rendition Investigation, dated 22 January 2015 ("**the first report**") with myself. However, it should be noted that I did not even know about the existence of the report

that was supposedly altered as it predated my appointment as IPID Executive Director.

15. During the eighteen (18) months of my suspension, I heard about Kgamanyane wreaking havoc in the IPID by initially suspending and transferring at least eight (8) senior managers for no other reason than that they worked with me or that they deposed affidavits about information which was within their knowledge as IPID employees.
16. At the time of my return to the IPID, on 19 October 2016, the Constitutional Court had confirmed the High Court decision to declare my suspension unlawful and set it aside, I became aware that more people had been displaced at IPID under the so-called “restructuring”.

### **Suspensions, transfers and dismissals**

17. I now deal with the suspensions and transfers that occurred immediately following my suspension.
18. Matthews Sesoko (“Sesoko”) was the Chief Director: Investigations and Information Management. He is the National Head of Investigations. He made an affidavit in my application to challenge the constitutionality of section 6(3) and 6(6). He was suspended on 21 May 2015. He was charged with altering the report into Zimbabwe renditions investigation. As soon as Kgamanyane was appointed as Acting Executive

Director, he asked for the Panday case which was under investigation by the IPID. To date, this case is not on the court roll. Kgamanyane also went to Limpopo and the North West and collected dockets in which former DPCI Head, Mthandazo Berning Ntlemeza and Major-General Jan Mabula were suspects.

19. Sesoko was subsequently unlawfully dismissed by Advocate Mxolisi Zondo (“**Zondo**”), who presided over General Sibiya’s disciplinary hearing, without having presented his case. He had requested a postponement owing to illness but Zondo rejected his medical certificate and dismissed him in absentia. In his written ruling, Zondo concedes that it would have been fair to hear Sesoko’s version of events but bizarrely dismisses him with immediate effect, without allowing him to state his defence, because the medical certificate submitted by Sesoko’s counsel was from a general practitioner and not from a specialist. Furthermore, Sesoko’s dismissal was on the basis of hearsay evidence of a single witness. **See Annexure A10.**
20. Sesoko was also criminally charged with Khuba and me for fraud and defeating the ends of justice. The criminal charges were withdrawn on 01 November 2016. Upon my return to office in 2016, a settlement was reached with Sesoko’s attorneys to reinstate him to his former position.
21. Upon my return to office, I discovered that there were allegations that of the manipulation of cases to artificially inflate the performance of the IPID in my absence. Kgamanyane even went to Parliament and reported that performance was much better in the absence of the suspended and transferred, however, this was a blatant lie which was told to make himself look good. Nhleko awarded him a bonus for good

performance.

22. Innocent Khuba ("Khuba") is the Provincial Head: Limpopo. Khuba was the lead investigator into allegations that some Zimbabweans were unlawfully handed over to Zimbabwean police, resulting in them being killed. He was suspended on 21 May 2015 on allegations of altering the investigation report into Zimbabwe 'renditions' with myself and Sesoko. During his suspension, he was told that he was suspended on the Minister's instructions. Khuba made an affidavit for my Constitutional Court case.
23. Prior to his dismissal, Khuba was approached by Werksmans, the Minister's PA and the Minister himself wanting to interview him and get him to implicate me. When he failed to implicate myself and Sesoko, disciplinary charges were brought against him. After six months of suspension, Khuba reached a plea bargain deal and was given a final written warning. Within a week, Khuba was summarily dismissed after he refused to falsely implicate me and Sesoko. Upon his refusal, he was dismissed with immediate effect.
24. Well before my appointment as IPID Executive Director, Ntlemeza himself had told Khuba while he was doing the rendition investigation that it was the only thing holding up his move to the DPCI after a 'hit on Dramat'. **See Annexure A11.**



25. After Khuba was dismissed, he was approached by officers from the Hawks and promised his job back if only he made a false statement saying I had forced him to change the rendition report. Khuba recorded this approach by a Colonel Mahlangu, who is heard imploring Khuba to make a false statement to empower Ntlemeza. In the recording, Colonel Mahlangu further says Khuba would be restored to his position if he made such a statement. **See Recording 1.**
26. Khuba has since been restored to his position through an order of the Labour Court. Furthermore, the criminal charges against Khuba, Sesoko and myself were withdrawn on 01 November 2016.
27. Felicia Ntshangase (“**Ntshangase**”) is the Gauteng Provincial Head who was suspended on 8 July 2015 by Kgamanyane. Five days after my suspension, Nhleko addressed IPID management and made disparaging remarks about the judiciary. Ntshangase made an affidavit regarding this. She was suspended on allegations of nepotism for recommending the appointments of 3 officials in her office. However, the decision to appoint said officials was made by Mr Kgamanyane. The Public Service Commission later cleared Ntshangase of wrongdoing and recommended action against Kgamanyane instead.
28. Nomkhosi Netsianda (“**Netsianda**”) is the head of corporate services. She was suspended on 19 August 2015 on allegations of leaking information to the media. The

leaked information concerned the appointment of the Deputy Minister's daughter to a Deputy Director: Investigation post in the Free State, where Kgamanyane was the Provincial Head. Ms Netsianda advised against the appointment of the Deputy Minister's daughter. The documentation and her written notes ended up in a City Press report. The Public Service Commission ("**PSC**") later found that the Deputy Minister's daughter did not have the experience required for the post. Netsianda was also charged for conducting herself in a disgraceful manner by raising her voice during the Audit Committee meeting, where the funding of the IPID's case challenging Nhleko's interference with the IPID's independence was discussed. The disciplinary case against Netsianda was driven by the chairperson of the Audit Committee. **See Annexure A12.**

29. Netsianda's position was advertised in May 2016 and Molefe Matsomela ("**Matsomela**") was subsequently appointed on a six-month contract. Matsomela's security screening was done before the post was advertised, clearly indicating that advertisement and interviews were just a formality – the post was earmarked for Matsomela. During his tenure, the so-called restructuring proceeded at full speed and some people were transferred to more than one position. Matsomela never came back to work upon my return to office and he resigned thereafter. Since Matsomela's appointment was irregular, the IPID has instituted a process to recover the fruitless expenditure relating thereto in the amount of R450 456.44.

30. The reputations of the affected officials were ruined. Kgamanayane even issued a directive for IPID staff not to talk to the suspended and transferred officials. Due to the fact that there were no grounds for the transfers, three officials, Antonett Mphago (“Mphago”), Viceroy Maoka (“Maoka”) and Moses Dlamini (“Dlamini”), lodged a dispute at the General Public Service Sectoral Bargaining Council (“GPSSBC”) for their unfair transfers and a case of unlawful transfer in the Labour Court. The three were transferred for 8 months at great cost to the IPID just to punish them for having worked with me. The total cost of the transfers is in excess of R1 million, including the arbitration award which they won at the GPSSBC.
31. Pule Hillary Viceroy Maoka (“Maoka”) is the Director: Litigation Services. He made an affidavit for my Constitutional Court case. Maoka lodged a complaint regarding the conduct of Adv. Baloyi of NPA in the rendition prosecution. Mr Maoka was precautionary transferred to Limpopo on 1 September 2015 on allegations of leaking information to the media. Maoka was transferred at the same time as Antonett Mphago (to Gauteng) and Moses Dlamini (to KwaZulu-Natal). He was never charged with leaking information but was charged with the cancellation of bookings and failure to inform his supervisor and failure to report sick leave to the supervisor. Maoka was re-instated by the Labour Court on 29 April 2016, returning to his office on 06 May 2016. He was suspended on 12 May 2016 for 'providing legal assistance to his colleagues and for failure to make financial disclosure'. **See Annexure A13.**

32. Moses Dlamini (“**Dlamini**”) is the National Spokesman who was suspended on 20 June 2016. He made an affidavit in my Constitutional Court case. Dlamini was precautionary transferred to KwaZulu-Natal on 1 September 2015 on allegations of leaking information to the media. Dlamini was transferred at the same time as Antonette Mphago (to Gauteng) and Viceroy Maoka (to Limpopo). He was never charged with leaking information but was charged with the cancellation of bookings and failure to report sick leave to the supervisor timeously. Dlamini was re-instated by the Labour Court on 29 April 2016, returning to his office on 06 May 2016. He was suspended on 20 June 2016 for speaking to suspended officials (Maoka and McBride) against the directive of Kgamanyane, as well as allegations of sending disparaging emails about officials to IPID staff. Kgamanyane had issued a directive that IPID staff should not communicate with transferred and suspended officials. Dlamini was served with a letter of intent to permanently transfer him to Eastern Cape within 3 days of returning to the office. After objecting, he was transferred to the post of Director: Investigations at National Office effective 1 July 2016 as part of the “restructuring” After he objected to the transfer, he was suspended. **See Annexure A13.**
33. Dlamini's disciplinary hearing was presided over by the Limpopo Director of Public Prosecutions, Advocate Ivy Thenga (“**Thenga**”) to whom IPID makes referrals of cases investigated by it – a clear conflict of interest. Thenga said that she had been instructed to finalise the hearing over the weekend. Dlamini was reinstated upon my return to office.

34. Antonett Mphago (“Mphago”) is the Director: Executive Support in the office of the Executive Director. She was precautionary transferred to Gauteng on allegations of leaking information to the media. The said information related to the appointment of the daughter of the Deputy Minister of Police's daughter to a post of Deputy Director: Investigations in the Free State. She was transferred to Gauteng provincial office to the position of Deputy Director: Corporate Services position pending finalisation of investigations. She was never charged with leaking of information nor notified of the outcome of the investigation. On 1 December 2015, Mphago's transfer was uplifted after she had written to Kgamanyane informing him that 60 days had elapsed since her transfer and that no charges had been brought against her. She was denied access to her office and had to squat in the passage. On 30 June 2016 she was transferred to a position of Director: Compliance Monitoring, as a result of 'restructuring'. Mphago was under investigation on allegations of meeting/talking to with me on my visit to the national office on 9 June 2016. **See Annexure A13.**

## **Restructuring**

35. It is clear that Kgamanyane subscribed to the view that “If it works – break it!”, as there is no other way to comprehend the rationale behind the restructuring that went on during his tenure. He was like a mad scientist, transferring people to positions for which that had no competencies or experience. Some people even had to seek medical attention as a result of the senseless restructuring.
36. Vinesh Boodhoo (**“Boodhoo”**) was the Director: Investigation in Gauteng. He was

appointed by Ntshangase with two other people, who were forced out of IPID due to their association with Ms Ntshangase. Dan Morema (“Morema”) was appointed to act in Ntshangase's position, while she was on suspension. Morema victimised Boodhoo, as a result, he lodged a complaint against Morema. Boodhoo received correspondence informing him that the outcome of the investigation of his complaint was that he should be transferred out of Gauteng. Boodhoo was permanently transferred to the post of Director: Investigations in the Eastern Cape effective 1 July 2016 as a result of “restructuring”.

37. Marianne Moroasui (**“Moroasui”**) is the Chief Director: Legal Services. In March 2016 Kgamanyane had the Provincial Head of Kimberly and the then Deputy Provincial Head of the Western Cape take over the running of Legal Services whilst she was in the office. During the purported restructuring of the IPID, she was informed that she would be transferred to a position of Provincial Head in either Mpumalanga or Kimberley. She resisted the move and referred the matter to the PSA. Whilst still in consultation with the Kgamanyane, he made the decision to finally transfer her to Kimberley as Provincial Head. She was instructed to commence in Kimberley on 1 July 2016. She did not comply with the instruction and continued reporting to the National Office and one day she went out to lunch and upon her return her “biometric access” was deactivated and she could not access the National Office. Moroasui was informed by Matsomela, who was at the time acting as the head of Corporate Services that she had to report to Kimberly. Her Colleagues had to bring her handbag,

work bag and other personal belongings to her on the street as she was refused access, even to the National Office parking.

38. Zuziwe Cele (**“Cele”**) is the Deputy Director: Supply Chain Management. She was permanently transferred to Deputy Director: Corporate Services in Gauteng Province effective 1 August 2016 as a result of restructuring. She was seen to be a stumbling block to procurement.
39. Lindokuhle Ngcongco (**“Ngcongco”**) was the Chief Financial Officer (“CFO”) was transferred to Gauteng as the Provincial Head to head investigations. She was perceived to be a stumbling block to Kgamanyane’s plans for procurement. She was also opposed to the IPID paying for legal costs incurred by the Minister of Police (Nhleko). She has since left the IPID.
40. Mamodishe Molope (**“Molope”**) is the Chief Director: Compliance Monitoring and Compliance Management. She was transferred to Mpumalanga as Provincial Head to lead investigations, as part of restructuring.
41. Quite a number of other junior people were also transferred from their positions as a result of “restructuring” initiated by Kgamanyane with the approval of former Minister of Police, Nkosinathi Nhleko.

## **Return to office**

42. I returned to office on 19 October 2016 and requested Kgamanyane for a handover report. He was quite petulant and refused to give me such a report. He never returned to work and was irregularly transferred by Nhleko to the DPCI. He was accepted by former Hawks Head, Mthandazo Ntlemeza and appointed to the DPCI structure in the Free State. I had no say in Kgamanyane's transfer, which was done by Nhleko and Ntlemeza without any consultation. There is no greater example of interference in the operations of the IPID by a minister who had been found to have acted unlawfully and unconstitutionally by the Constitutional Court. To make matters worse, Kgamanyane was facing disciplinary action for the havoc he had caused at IPID. I wrote to Ntlemeza about my concerns. See **Annexure A14**.

43. Nhleko had awarded Kgamanyane a performance bonus which was clearly a gratification. He was the only one in IPID to be awarded a performance bonus.

## **Infiltration of IPID by Crime Intelligence**

44. I also found that IPID had been infiltrated by Crime Intelligence in the form of Tlou Kgomo ("Kgomo") and Emily Motsugi ("**Motsugi**"). Kgomo had been appointed as Director: Investigations. He was appointed to act as head of investigations in Sesoko's position. The two beat a hasty retreat back to Crime Intelligence soon after my return to office. My



next encounter with Kgomo was in Parliament where he was part of Phahlane's team to counter IPID's investigations. Kgomo would later approach IPID investigators, Mandla Mahlangu (**"Mahlangu"**) and Cedrick Nkabinde (**"Nkabinde"**), to offer them Brigadier positions to induce them to make false statements to implicate IPID managers in wrongdoing. In a recording made by one of the investigators, Kgomo can be heard making such an offer to Mahlangu. He confirms to Mahlangu that he is working with the North West team led by Major General Jan Mabula (**"Mabula"**) investigating a concocted case that would bring me "down", along with other IPID investigators and torpedo the investigation against Phahlane. Kgomo also took Mahlangu to Potchefstroom to meet Mabula. **See Annexure A15 (there's also a recording).**

45. Upon my return from my suspension on 19 October 2016 I was alerted of irregularities on how investigations had been conducted during the time when I was on suspension. There were allegations that certain cases that were being investigated by the IPID had been pre-maturely closed without carrying out proper investigation processes as contained in the Standard Operating Procedures. This was done in certain instances to push the statistics and other acts that amounted to defeating the ends of justice. These cases were termed "special closures". This was intended to manipulate statistics to give an impression that performance had been better under Kgamanyane. I instructed our Integrity Strengthening Unit to investigate these allegations. The Auditor-General also flagged some of these cases. One employee has already been dismissed as a result of this investigation. Another senior employee, Dan Morema, resigned when he was approached to make a statement. **See Annexure A16.**

## **Investigation into Phahlane**

46. Soon after my arrival I received a complaint from Paul O'Sullivan ("**O'Sullivan**"). The complaint was about a case of corruption and money laundering that had been opened against the then Acting National Commissioner of Police, General Phahlane. This case was first reported to the IPID before my arrival.
47. O'Sullivan had brought the case to the attention of Mr Kgamanyane, the Acting Executive Director, in March 2016 while I was on suspension. The complaint brought by O'Sullivan was that the case had not been investigated and he requested me to intervene and ensure that matter was investigated. One of the strange things that I found upon my return was that two cases had been opened, one as a duplicate of the other and vice versa – and both were then closed as duplicates of each other.
48. At the end of November 2016, a Task Team was formed that was to investigate the cases of corruption and money laundering that were levelled against General Phahlane. The Task Team comprised of Mandla Mahlangu, Temane Binang, Mantsha Raphesu and Cedrick Nkabinde.
49. The case to be investigated had to do with the construction of Phahlane's house at Sable Hills Estate allegedly with funds that were provided by a service provider to the SAPS. There was also the case of a music system worth R80 000 that was alleged to have been paid from the account of a service provider to the SAPS. Further there was a case of

vehicles in Phahlane's possession that, according to him, were either purchased and owned by him or sponsored for his use. The IPID investigated all cases and there was clear evidence of a corrupt relationship between Phahlane and service providers to the SAPS.

50. During January 2017 a search warrant was executed at the Sable Hills home of Phahlane. The purpose of the search was to identify the music system that was bought and paid for by a SAPS service provider. Present at the search was the person who had installed the music system, this was for purposes of identifying that the music system in Phahlane's house was the same music system that had been purchased by funds from a SAPS service provider and that he had installed in Phahlane's house.

51. After the search warrant was executed at Phahlane's house, he initiated a civil suit challenging the lawfulness of the search warrant.

52. The parties have exchanged papers in this matter and it was dormant since the latter part of 2017. Recently one of the original Task Team members, Cedrick Nkabinde, who was approached by Kgomo as mentioned in preceding paragraphs, deposed a supporting affidavit for Phahlane whilst he was undergoing a disciplinary process for several acts of misconduct. Nkabinde resigned with immediate effect on 19 October 2018, and his disciplinary hearing did not proceed.

### 53. Counter-investigation

54. I want to pause here and go back to when the initial investigation into the case of corruption and money laundering were initiated against Phahlane. O'Sullivan was the complainant and also because of his background in the matter he accompanied IPID investigators to the Sable Hills Estate to point out several witnesses to the case that the IPID was investigating. On some of the occasions he accompanied the IPID investigators together with his associate and attorney Sarah-Jane Trent.

55. As a result of the on-going investigations by the IPID with the assistance of O'Sullivan and Trent, Phahlane used his powers as the Acting National Commissioner to set up a team from the North West (Mabula Team) to start a counter-investigation on the IPID investigation against himself.

56. This SAPS counter-investigation was authorised under the guise of a security breach against the Acting National Commissioner. The North West Provincial Commissioner together with the Mabula Team concocted a report that was utilised to authorise their travel to Gauteng to investigate the purported security breach. Crime Intelligence ("CI") had earlier done an investigation of the alleged security breach and it found that there was in fact no security breach. The officers who did the investigation made statements to this effect. As a result of the concocted report, General Makhele was charged with defeating the ends of justice. This case is still with the NPA.

57. The Mabula Team then proceeded to counter the investigation of the IPID by approaching all the witnesses in the IPID investigation to get them to change their initial version against Phahlane and the SAPS service providers and their involvement in the construction of Phahlane's house and the cars.
58. Their counter-investigation resulted in a case being opened, Kameelfdrift 12/01/2017, against O'Sullivan and his associate Trent. The charges against them were, amongst others of impersonating IPID officials in terms of section 33(5) of the IPID Act, these were clearly trumped up charges. The charges were that they had visited Phahlane's Sable Hills home together with IPID investigators and that during the said visit they had impersonated IPID investigators.
59. During Trent's arrest her mobile phone was unlawfully confiscated and booked in for investigation in order to try and support the charges that were being fabricated against the pair and later on the IPID investigators that were added.
60. O'Sullivan and Trent made a number of appearances in the Pretoria Magistrate Court, in the case emanating from the Kameelfdrift case and around May 2017. Brigadier Ncube, one of the members of the Mabula Team made contact with two of the IPID investigators. He informed them that he was the investigator in the Kameelfdrift 12/01/2017 case and that he intended on adding them as co-accused in the case already before the Pretoria Magistrate Court.

61. Trent's phone was stolen by the Mabula Team and taken to Israel to be downloaded. The contents were leaked to the Sunday Times in a bid to falsely implicate myself and my investigators in wrongdoing to protect Phahlane.

62. There was a litany of charges that were brought against Mahlangu and Binang who were members of the IPID Task Team, at the top of the list were charges of contravening section 33(5) and section 33(2) of the IPID Act. The two investigators were added in State versus Sarah-Jane Trent and three others, which was held the Pretoria Magistrate Court. When Ncube had earlier come to IPID to obtain the statements of Mahlangu and Binang, I asked him why he was in Gauteng as he was based in the North West, he opened a case of intimidation against me.

63. The State Advocate in the matter was a Molatlhwa Mashuga ("**Mashuga**"), who also has some links to the NW SAPS team. The case was remanded on numerous times at the behest of the State, apparently for further investigations. After the numerous postponements for further investigations by Mashuga, the defence in October 2017, i.e IPID made an application that the matter be struck off the roll in terms of section 342A(3)(c) of the Criminal Procedure Act, No 51 of 1977, which deals with unreasonable delays in a matter before a court "

*"(3) If the court finds that the completion of the proceedings is being delayed unreasonably, the court may issue any such order as it deems fit in order to*

*eliminate the delay and any prejudice arising from it or to prevent further delay or prejudice, including an order-*

(a) ...;

(b) ...;

(c) *where the accused has not yet pleaded to the charge, that the case be struck off the roll and the prosecution not be resumed or instituted de novo without the written instruction of the attorney-general;”*

64. The Magistrate made an order that the matter be struck off the roll in terms of the above-mentioned section. The matter could only be re-enrolled with the written instruction of the NDPP, Shaun Abrahams at the time. This order by the Magistrate was made In October 2017.

65. It's important to indicate that neither the order by the Magistrate made in terms of section 342A(3)(c) of the Criminal Procedure Act nor the Prinsloo J Order, made in November 2017, stopped the Mabula Team from continuing with their counter investigation. This was clear when immediately after both orders Ncube took another warning statement, this time against Mantsha Raphesu and threatened to arrest the other members of the Task Team including myself, but despite all the threats the fabricated case is yet to be re-enrolled, further proving that the charges are baseless and are trumped up.

**Interdict and main application wrt the counter-investigation (Court order in favour of the IPID)**

66. With the on-going counter-investigation by the Mabula Team, it was clear that the intention was to scupper the IPID investigation and the IPID brought an urgent application before the North Gauteng High Court in order to stop the counter-investigation and also to seek a declaratory that members of the SAPS that were themselves subjects of an investigation by the IPID should not investigate or oversee an investigation against members of the IPID.

67. An urgent interdict was sought against the Phahlane, at the time, the North West Provincial Commissioner, Mabula and Ncube. Later, in the main application, the other members of the Mabula Team were added as respondents as they were conducting this counter-investigation against members of the IPID.

68. Throughout the exchange of papers in this matter, the Mabula Team insisted that the cases that the IPID stated they were investigating against them were “cold cases”. This was proven to be false as a list was annexed in the papers to show the status of the cases against the members of the Mabula Team. It is, in any event, disingenuous for Mabula to say as the evidence shows that the only reason the cases had not progressed was due to them being suppressed. There is a **recording** in which one of the suspects admits to torturing the deceased in the Makau case and he implicates Mabula. See **Recording 3**



69. An agreement was reached by the parties and it was made the order of the court by Prinsloo J. At the time the order was made, Phahlane had been suspended as the Acting National Commissioner and General Mothiba had been appointed to act. Prior to the Prinsloo J order that was made on 28 November 2017, Mothiba had also been engaged on countless occasions to try and resolve the matter outside of the courts.

70. Prior the making of the Prinsloo J order, there had been countless engagements with the different senior management within SAPS in a bid to avoid litigation and come to an amicable solution to the number of civil suits that were in the courts. The Portfolio Committee on Police also tried to intervene by requesting an appearance and briefing by Phahlane, whilst he was still acting National Commissioner, and his team and the Executive Director and his team in order to try and resolve the battle that was playing out between the two departments.

71. All of the engagements and attempts to amicably resolve the impasse between the two sister departments did not assist and this culminated in the Prinsloo J interim order that was agreed upon by the parties. It was further agreed that the main application where a declaratory was sought would be heard at a later stage and would ensure that the issue of the counter-investigation would be finalised.

72. Despite the order that was made, the IPID became aware after the Mabula Team were continuing with the counter-investigation against the IPID, in the form of the investigators and myself.

73. As a result the IPID continued to engage the SAPS, the ministry as well as the office of the NDPP, in trying to ascertain whether the continuing investigation was sanctioned at a senior level.

74. There were also meetings held with General Sitole and Minister Cele, after their appointments to their respective offices, in order to bring them up to speed with these matters and also with a hope that the Minister would intervene.

75. Despite all the above efforts on the part of the IPID, as can be seen from the numerous letters to the various stakeholders, the National Commissioner only indicated that he would abide by the order of the court. The Minister on the other hand was unrepresented when the matter was argued for a final order on 21 June 2018. **See Annexure L.**

76. The matter was set down for argument before Judge Tuchten on 21 and 22 June 2018. , From the outset Phahlane agreed that he would agree to not take part or to oversee any investigation that was carried out by the members of the Mabula Team and that was also made part of the Tuchten Order that was made on 26 June 2018.

77. An important point to note is that, the National Commissioner of the SAPS, Sitole prior to the proceedings had entered a notice to abide by the order of the court and this was done in his official capacity.

78. The interpretation of this notice to abide coming from the National Commissioner's office led to the question that if the Commissioner abides by the prayers of the IPID, what locus standi did the members of the Mabula Team have to continue with an investigation that did not seem to be sanctioned by the Head of the SAPS?

79. There were arguments for both sides and at the last minute the Deputy National Commissioner, General Mfazi, gave a written undertaking that the members of the Mabula Team would no longer be involved in any "revenge-investigations" against members of the IPID that were investigating them.

80. The term "revenge-investigation" was made by Judge Tuchten in his judgment on 26 June 2018. The order was in effect drafted around section 25 of the IPID Act, which speaks to instances where an investigator has a conflict of interest in any investigation that he carries out that he would have to declare such interest. The SAPS Act does not have a similar clause that dealt with conflicts of interest. The Judge in this matter added that such members of the SAPS should also be precluded from overseeing such investigation.

81. Further the above gap in the SAPS legislation would be temporarily resolved by the Tuchten Judgment until such a time that there were appropriate regulations or standing orders or national legislation dealing with this gap.

### **Court order regarding search and seizure by Phahlane on vehicle investigation**

82. During the investigation into the Phahlane vehicle case, which he claimed he owned and others were sponsored, the IPID learnt that there were several SAPS service providers that Phahlane was conducting acts of criminality with. Amongst the service providers were Durandt Snyman, Keith Keating, the proprietor of FDA and others. The relationship between these parties was unravelled and IPID together with members of the DPCI conducted search warrants on the properties of the above-mentioned service providers on 4 December 2017. **See Annexure A17.**

83. The lawfulness of the search warrants was challenged. The applicants raised technical challenges against the affidavit utilised to authorise the search warrant by the magistrate, also that the IPID officials are not police officials and therefore cannot execute a search warrant in terms of the Criminal Procedure Act and other technicalities.

84. The matter was set down and heard on 18 June 2018 and the judgement was delivered on 3 August 2018 by Judge Kollapen. This judgment dealt thoroughly with all the technical points raised by the applicants. **See Annexure N.**

85. The applicants later brought an application for leave to appeal and it was dismissed. We have been advised by IPID's attorneys that the applicants are petitioning the Supreme Court of Appeal.

## **NPA bias**

86. The NPA under the leadership of Advocate Shaun Abrahams (**“Abrahams”**), working with Advocates Sibongile Mzinyathi (**“Mzinyathi”**), George Baloyi (**“Baloyi”**), Sello Maema (**“Maema”**), Molatlhwa Mashuga (**“Mashuga”**), Raymond Mathenjwa (**“Mathenjwa”**) has lost all credibility. I am of the belief that these advocates are a core group that has been at the forefront of enabling the capture of the criminal justice cluster through the persecution of corruption fighters. They were also involved in the protection of criminal suspects by declining to prosecute suspects investigated by the IPID in cases where their subordinates who are experienced prosecutors had recommended prosecution based on abundant evidence but the advocates would override those decisions.

87. I wrote to Abrahams on numerous occasions requesting that he review Mzinyathi's and Baloyi's decisions to undermine the decisions of Senior Public Prosecutors. Abrahams simply agreed with Mzinyathi's and Baloyi's actions. **See Annexure A18.**

88. I expressed my concern that Advocate Sello Maema (**“Maema”**) had been allowed to prosecute us as in my view his actions to prosecute us without a shred of evidence involves dishonesty and a lack of integrity.

89. Mashuga was behind the prosecution of IPID investigators and O'Sullivan, against a court order, on fabricated charges to torpedo the IPID's investigation into Phahlane.

### **The role of Hogan Lovells**

90. Hogan Lovells allowed itself to be used to hollow out public institutions, especially the IPID and the DPCI. This firm was used to get rid of people in the IPID, the DPCI. Common figures in the tainted disciplinary processes with fabricated charges include Advocate William Mokhari (“**Mokhari**”) and Advocate Mxolisi Zondo (“**Zondo**”). In IPID, Sesoko was dismissed after submitting a sick note, without even being allowed to present his case by Zondo with Mokgatle and Mokhari presiding over a sham disciplinary hearing. A similar thing had happened to Sibiya at the DPCI. The same team, except for the presiding officer, were involved in Khuba’s disciplinary hearing – the result was that Khuba was dismissed for failing to implicate me in wrongdoing.

### **Crimes against the State (CATS) unit**

91. Myself, Sesoko and Khuba were investigated by the DPCI’s Crimes Against the State (Cats) unit for fraud and defeating the ends of justice. The charges were dropped as there was never any shred of evidence. This unit was used to pursue a political agenda and to target individuals within the criminal justice cluster who stood up against state capture. It is headed by Brigadier Nyameka Xaba who reported to Ntlemenza. The same unit investigated other fabricated cases against Minister Pravin Gordhan, the so-called Rogue Unit and seems to have taken instructions or worked with SARS Commissioner Tom Moyane (“**Moyane**”). This can be seen from the incident involving SARS Legal Advisor Vlok Symington, who was prevented from leaving a boardroom until he handed back a document on the instructions of Moyane.

### **Leon Mbangwa – Nhleko’s Chief of Staff**

92. Leon / Lionel Mbangwa was employed by Nhleko as his Chief of Staff. The problem with his appointment is that he is a convicted criminal and illegal immigrant with no South African Identity Book/Card. He was convicted and sentenced to four years imprisonment for using a fraudulent ID. His security screening was processed through the IPID by Kgamanyane to avoid detection were it to be done through the SSA. This begs the question: Why would government minister want an illegal immigrant as his Chief of Staff?

**See Annexure A19.**

### **Reference group**

93. In October 2014, the Minister of Police, Nkosinathi Nhleko established a reference group to “...deal with issues of human resources, suspensions... the state of crime intelligence, administrative queries and perception of SAPS.” At the time, the Minister said the ministry would use the work done by the reference group to “...turnaround the image of the police and build public confidence in the service.” Surprisingly the reference group was comprised of public officials such as Adv Raymond Mathenjwa (“**Mathenjwa**”) from the NPA. Mathenjwa would later aggressively demand the docket into the renditions investigation – which was clearly beyond the scope of the reference group announced by Nhleko. Further, this was an undesirable situation as Mathenjwa was a senior prosecutor who was involved in deciding other matters referred to the NPA by the IPID. At the time, the IPID had already referred the docket to the National Director of Public Prosecutions for a decision on prosecution. That neither Mathenjwa nor the minister saw the clear conflict of interest which could compromise the IPID’s independence suggests that there

was some ulterior purpose to the establishment of the reference group.

### **Portfolio Committee on Police**

94. During the period of my suspension, IPID staff who were under attack by Kgamanyane directed correspondence to the Portfolio Committee on Police (“PCP”) – no response was ever received. I also wrote to the chairperson of the same committee alerting him to what was going on. I never received a response from him. **See Annexure A20.**